(28,322)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921.

No. 367.

LIBERTY OIL COMPANY, PETITIONER,

vs.

THE CONDON NATIONAL BANK, ATLAS PETROLEUM COMPANY, C. M. BALL, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

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a Pleas and proceedings in the United States Circuit Court of Appeals for the Eighth Circuit, at the December Term, 1920, of said Court, before the Honorable William C. Hook and the Honorable John E. Carland, Circuit Judges, and the Honorable Robert E. Lewis, District Judge.

Attest:

[Seal of the United States Circuit Court of Appeals, Eighth Circuit.]

E. E. KOCH,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

Be it Remembered that heretofore, to-wit: on the fifteenth day of July, A. D. 1920, a transcript of record, pursuant to an appeal allowed by the District Court of the United States for the District of Kansas, was filed in the office of the Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, in a certain cause wherein Liberty Oil Company was Appellant and The Condon National Bank, et al., were Appellees, which said transcript as prepared, printed and certified by the Clerk of said District Court in pursuance of an Act of Congress approved February 13, 1911, is in the words and figures following, to-wit:

1 (*Waiver of Issuance of Citation.*)

In the United States District Court for the District of Kansas, Third Division.

LIBERTY OIL COMPANY, INCORPORATED, a Corporation, Plaintiff,

vs.

THE CONDON NATIONAL BANK, a Corporation, Defendant; ATLAS Petroleum Company, a Corporation; C. M. Ball, Isadore Litman, P. G. Keith, and J. H. Keith, Interveners.

Come now the defendant and the interveners in the above entitled action by their attorneys and solicitors of record and do hereby waive issuance and service of citation and notice of appeal as required by law, and do hereby enter their voluntary appearance in the appeal to the Circuit Court of Appeals of the United States for the Eighth Circuit.

Dated this 17th day of April, 1920.

THE CONDON NATIONAL BANK,
ATLAS PETROLEUM COMPANY,
C. M. BALL,
ISADORE LITMAN,
P. G. KEITH,
J. H. KEITH,
By JOHN J. JONES,
J. H. KEITH,
Their Attorneys of Record.

Filed in District Court April 17, 1920.

Petition for Appeal.

To the Honorable John C. Pollock, District Judge of the above entitled Court:

The above named plaintiff, feeling itself aggrieved by the decree made and entered upon this cause on the 17th day of April, 1920, does hereby, and did at the time of the rendering of such decree, give notice of its appeal therefrom and does hereby appeal from said decree to the Circuit Court of Appeals for the Eighth Circuit for the reasons specified in the assignment of errors which is filed herewith, and it prays that its appeal be allowed and that citation issued as provided by law and a transcript of the record proceedings and papers upon which said decree was based, duly au-
2 thenticated, may be sent to the United States Circuit Court of Appeals for the Eighth Circuit Court sitting a- ——, and

Your petitioner further prays that the proper order fixing the security to be required of him to perfect his appeal be made, and that an order be made fixing the amount of the bond which shall operate as a supersedeas.

CHAS. G. YANKEY,
HARRY E. KARR,
Solicitors for Plaintiff.
HOLMES, YANKEY, HOLMES & EATON, KARR, HAMMOND & DARNALL, *Of Counsel.*

Filed in District Court April 17, 1920.

Order Allowing Appeal.

The petition granted and the appeal allowed upon giving a bond conditioned as required by law in the sum of Five Hundred ($500.00) Dollars, and that the appeal shall operate as a supersedeas upon the plaintiff filing a bond in the sum of Fifteen ($15,000.00) Thousand Dollars with sufficient sureties, to be conditioned as required by law.

JOHN C. POLLOCK,
Judge.

Filed April 17, 1920.

In the District Court of the United States for the District of Kansas, Third Division.

No. 346.

LIBERTY OIL COMPANY, INCORPORATED, a Corporation, Plaintiff,

vs.

THE CONDON NATIONAL BANK, a Corporation, Defendant.

Petition.

Plaintiff for its cause of action against the defendant alleges:

That the plaintiff, Liberty Oil Company, Incorporated, is a corporation organized and existing under and by virtue of the laws of the State of Virginia, having its principal place of business at Alexandria, and is a resident inhabitant and citizen of the State of Virginia.

3 That the defendant, The Condon National Bank, is a banking corporation organized and existing under and by virtue of the laws of the United States relating to National Banks, and has its place of business in the city of Coffeyville, Montgomery County, Kansas, and is a resident inhabitant and citizen of the State of Kansas, and of the Third Division of the above entitled court.

That heretofore and on the 24th day of May 1918, the Liberty Oil Company, Incorporated, entered into a written contract with the Atlas Petroleum Company, a corporation, C. M. Ball, Isadore Litman, P. G. Keith and J. H. Keith, which contract contemplated and provided for the purchase by the Liberty Oil Company, Incorporated, of oil and gas leases in the County of Butler, State of Kansas, reference to which contract is hereby made as part hereof the same as though herein fully set out, and the same is attached hereto marked Exhibit "A."

That at the time of the execution of said contract a certain instrument in writing was entered into by the Defendant, The Condon National Bank, wherein it agreed to act under said contract and abide by and carry out its terms, reference to which instrument and agreement in writing is hereby made a part hereof and attached to this petition, marked Exhibit "B."

That in accordance with, *and* under — by virtue of the said Exhibits "A" and "B," plaintiff paid The Condon National Bank, Coffeyville, Kansas, the defendant herein, on the 24th day of May, 1918, the sum of One Hundred Thousand ($100,000.00) Dollars, which sum the said Bank now has in its possession and retains the same from the plaintiff.

That on the 27th day of May, 1918, the second parties named in Exhibit "A" presented to the plaintiff a purported abstract to the property described in Exhibit "A." That within the time required by Exhibit "A" an examination of the title as presented was made by The Liberty Oil Company, Incorporated, and certain objections

and requirements with respect to the same as presented were made for and on behalf of the Liberty Oil Company, Incorporated, and that such exceptions and objections were duly, and within the time provided for in Exhibit "A," submitted to the second parties of the contract identified as Exhibit "A," and a copy of such exceptions were sent to the defendant. A copy of such exceptions and objections as made is hereto attached as part hereof and marked Exhibit "C."

That all of said exceptions and objections as made by the plaintiff were good and valid exceptions and objections to the title as presented as a good and marketable title as required by the contract.

That as a more particular statement of part of the irregu-
4 larities, defects, and failure of title, the plaintiff states that the said abstract as presented by the second parties to Exhibit "A" showed the following state of facts:

That in said abstract it appeared that on the 18th day of September, 1893, one J. E. Putnam was the holder of the record title to the south half of lot one (1), lot two (2), and the southeast quarter of the northwest quarter of Section thirty-one (31) Township twenty-six (26), Range five (5), Butler County, Kansas, and that on the 21st day of September, 1893, said Putman made a deed to S. H. Standart, assignee, which deed recited that he, the said J. E. Putnam, was not the owner of said property and only held the title of the same for Crippen, Lawrence & Company, a partnership, and that the said Crippen, Lawrence & Company, had on the 18th day of September, 1893, made a deed of general assignment for the benefit of their creditors to S. H. Standart as assignee, and that the deed which he, the said J. E. Putman, was then making was for the purpose of including in the assets of the said Crippen, Lawrence & Company, under said general assignment, the said property as an asset of said estate; that the said deed and conveyance from the said Putnam to Standart was accepted by the said Standart as assignee for the benefit of creditors of the said Crippen, Lawrence & Company.

Plaintiff alleges that Crippen, Lawrence & Company were a partnership having their principal place of business in Arapahoe County, Colorado, and that the said general deed of assignment made by said partnership for the benefit of their creditors was made and filed in Arapahoe County, Colorado, and that jurisdiction over the said assignment was assumed and accepted by the District Court of Arapahoe County, Colorado, and under the direction of said court the said S. H. Standart as such assignee filed his bond for the faithful performance of his duties.

That on the 31st day of August, 1894, S. H. Standart, Assignee, made a deed to said property, together with other property, to Benjamin Jenkins; that the said purported conveyance made by S. H. Standart, Assignee, to Benjamin Jenkins was ineffective and void as a conveyance of title in that under said abstract as presented there was no showing that the said conveyance was made under and by virtue of any order of the District Court of Butler County, Kan-

sas, or of any other court of competent jurisdiction, and that in fact the said conveyance was ineffective and void in that said deed, if made by the said H. H. Standart, Assignee, was not made by him on any application to a court of competent jurisdiction, nor was the sale or the conveyance of said property made upon the order of any court of competent jurisdiction as required by law in the State of Kansas.

That by reason of the said insufficient, defective, and void conveyance, the title of Charles R. Nuttle who executed the oil and gas leases intended to be sold and transferred in said contract Exhibit "A," was not a good and marketable title to the said property in that the title which the said Charles R. Nuttle purported to have in the said property arose from and was directly dependent upon the conveyance of S. H. Standart, Assignee, to Benjamin Jenkins as a good and legal and effective conveyance of the title to said property, and that the title of the second parties to Exhibit "A" was not a good and marketable title to the oil and gas leases and to the oil and gas in said property or to the right to remove the same from said land for the same reason.

That the said objections more particularly herein set out, together with all other objections as set out in Exhibit "C," were duly and properly made as required by Exhibit "A," and that the said second parties to the Exhibit "A" failed, neglected, and refused to correct or remedy the title as objected to by the plaintiff in the exceptions and objections made to said title. That each and all of the objections made by the plaintiff to said title were valid objections, and each and all of the same destroyed the title of the said second parties to Exhibit "A" to the said oil and gas leases and to the oil and gas in and under said property and to the right to remove same as good and marketable titles as required by said Exhibit "A," and that by reason of said defects, irregularities and complete failure of title as made in the said objections and exceptions of the plaintiff, the title of the said second parties to Exhibit "A" was not a good and marketable title as required by the said Exhibit "A."

Plaintiff further alleges that during the time provided for in said contract, and up until the time that demand was made, as hereinafter set out, upon the defendant to return to the plaintiff the said sum of One Hundred Thousand ($100,000.00) Dollars, said title of second parties in Exhibit "A" to said property was not a good and marketable title as required by Exhibit "A," and was defective, irregular and insufficient as a good and marketable title as set forth in the exceptions and objections to said title hereinbefore referred to and said defects and failure of title were not corrected and remedied by the said second parties in Exhibit "A."

That heretofore, and on the 11th day of July, 1918, the defendant was duly notified that the said title was defective and insufficient as a good and marketable title for the reasons as hereinbefore stated, and demand was made upon the defendant to return to the plaintiff the said sum of One Hundred Thousand ($100,000.00) Dollars which it held, and which it, under said Exhibits "A" and "B,"

agreed to return to the plaintiff, and that the defendant there-
6 upon refused to return said sum of money, and has converted and appropriated the said sum to its own use to the damage of the plaintiff in the amount of One Hundred Thousand ($100,000.00) Dollars with interest at six (6) per cent from the 11th day of July, 1918.

Plaintiff further alleges that it has performed and done all things which it was to perform and do under said Exhibits "A" and "B" and within the time as therein provided, and is in no manner and form in default in any particular.

Wherefore, plaintiff demands judgment against the defendant in the sum of One Hundred Thousand ($100,000.00) Dollars with interest at six (6) per cent from the 11th day of July, 1918, together with costs of this action and such other relief as in the premises it would be entitled to receive.

HOLMES, YANKEY & HOLMES,
Attorneys for Plaintiff.

Filed in District Court August 1, 1918.

EXHIBIT "A."

Contract.

Exhibit "A" of Petition omitted, being identical with Exhibit 1 in Bill of Exceptions appearing on page 21 of this record.

EXHIBIT "B."

Receiut Draft, etc., by Condon National Bank.

Exhibit "B" of Petition omitted, being identical with Exhibit 2 in Bill of Exceptions, appearing on page 24 of this record.

EXHIBIT "C."

Opinion of Holmes, Yankey & Holmes on Abstract.

Exhibit "C" of Petition omitted, being identical with Exhibit 4 in Bill of Exceptions appearing on page 26 of this record.

Answer.

The defendant, for its Answer to the Petition of the plaintiff, admits and alleges:

7 That the plaintiff, Liberty Oil Company, incorporated, is a corporation organized and existing under and by virtue of the laws of the State of Virginia, having its principal place of business at Alexandria, and is a resident, inhabitant and citizen of the State of Virginia, that the defendant, The Condon National Bank, is a banking corporation, organized and existing under the laws of the

United States relating to National Banks, and has its place of business in the City of Coffeyville, Montgomery County, Kansas, and is a resident, inhabitant and citizen of the State of Kansas, and of the Third Division of the above entitled court.

That heretofore and on the 24th day of May, 1918, the Liberty Oil Company, incorporated, entered into a written contract with the Atlas Petroleum Company, a corporation, C. M. Ball, Isadore Litman, P. G. Keith, and J. H. Keith, a copy of which contract is attached to plaintiff's petition, marked Exhibit "A", reference to which contract is hereby made, as a part hereof, as fully and to the same extent and with like effect as *the* herein full- set out:

That the Atlas Petroleum Company is a corporation organized and existing under and by virtue of the laws of the State of Oklahoma, with its principal office at Number 1012 Baltimore Avenue in the City of Kansas City, State of Missouri; that said Atlas Portland Petroleum Company is a resident, inhabitant and citizen of the State of Oklahoma; that C. M. Ball, Isadore Litman, P. G. Keith and J. H. Keith, each and all are residents, inhabitants and citizens of the State of Kansas and of the Third Division of the above entitled court.

That at the time of the execution of said contract, a certain instrument in writing was entered into by the defendant, The Condon National Bank, a copy of which written instrument is attached to plaintiff's petition, marked Exhibit "B", reference to which instrument in writing is hereby made a part hereof, as fully and to the same extent and with like effect as if written out herein full.

That in accordance with and under and by virtue of said Exhibits "A" and "B" attached to plaintiff's petition, plaintiff paid to this defendant on the 24th day of May, 1918, the sum of One Hundred Thousand Dollars ($100,000) which said sum said defendant now has in its possession and under its control; that this defendant has no interest whatever in said sum of $100,000, except to see that the same is passed into the hands of the parties entitled thereto, and to discharge itself of all liability under said instrument in writing, copy of which is attached to plaintiff's petition, marked Exhibit "B".

That the plaintiff herein has demanded of the defendant
8 the said sum of $100,000, and that the said Atlas Petroleum Company, C. M. Ball, Isadore Litman, P. G. Keith and J. H. Keith have likewise and also demanded that the defendant herein pay and deliver to them the said $100,000, so deposited with this defendant under said Exhibit "B" of plaintiff's petition.

This defendant, not knowing who is justly entitled to said sum of $100,000, has heretofore refused to pay or deliver the same to either the plaintiff or the said Atlas Petroleum Company, C. M. Ball, Isadore Litman, P. G. Keith, and J. H. Keith, and now asks that the said Atlas Petroleum Company, C. M. Ball, Isadore Litman, P. G. Keith and J. H. Keith, and each of them, be made parties to this cause, and brought into this action, and required to set up their claim to said sum of $100,000.

That this defendant has no interest in said sum except as aforesaid, and now offers to pay the amount thereof into court, or to such person

or persons as this court shall order, and direct, and to obey all further orders of this court made in connection therewith.

Wherefore, This defendant asks that the said Atlas Petroleum Company, C. M. Ball, Isadore Litman, P. G. Keith, and J. H. Keith, and each and every of them, be made parties to this cause and brought into court and required to set up their claim in and to said sum of $100,000; that the court herein make such order as seems to it meet and proper with reference to the disposition of said money, and that this defendant, upon compliance with said order, be discharged from all liability in connection therewith, for its costs, and for general relief.

JOHN J. JONES,
Attorney for Defendant.

Filed September 16, 1918.

Order Making Interveners Parties to the Cause.

Now, on this 12th day of November, A. D., 1918, came regularly on to be heard the above entitled cause, upon the Petition and Answer in this case, the plaintiff present by its attorney-, Holmes, Yankey & Holmes, and the defendant by its attorney, John J. Jones; said matter was submitted to the court and the court, being fully advised in the premises, finds:

That the prayer of said Answer should be, and the same is hereby granted.

It is therefore ordered, adjudged and decreed that the Atlas
9 Petroleum Company, C. M. Ball, Isadore Litman and P. G. Keith and J. H. Keith be made parties to said cause, and that they and each of them be required to set up what claim or interest, if any, they have in said controversy, and in or to the money held by the defendant in this action, within twenty days from the date hereof. Thereupon said defendants, Atlas Petroleum Company, C. M. Ball, Isadore Litman and P. G. Keith and J. H. Keith, and each of them, by and through their attorney, John J. Jones, entered their voluntary appearance in said cause, and waived the issuance and service of process, and asked, and for good cause shown were given to and including the 2nd day of December, 1918, to plead herein and said cause continued.

JOHN C. POLLOCK,
Judge.

O. K.

JONES & ALLEN.
HOLMES, YANKEY & HOLMES.

Filed in District Court, Nov. 12, 1918.

Answer and Cross-petition of Atlas Petroleum Company, C. M. Ball, Isadore Litman, P. G. Keith and J. H. Keith, Interveners.

Answer.

The Intervenors, Atlas Petroleum Company, C. M. Ball, Isadore Litman, P. G. Keith and J. H. Keith, for their Answer to the petition of the Liberty Oil Company, Incorporated, plaintiff, deny and allege:

1. That said Petition of the plaintiff filed in this cause, does not state facts sufficient to constitute a cause of action in favor of the plaintiff and against these intervenors, or either of them, or to entitle plaintiff to any relief in this cause.

2. That these Intervenors, and each of them, deny each and every allegation, averment and statement contained in said petition, except those hereinafter expressly admitted.

3. That heretofore and on the 24th day of May, 1918, the Liberty Oil Company, Incorporated, entered into a written contract with the Atlas Petroleum Company, a corporation, C. M. Ball, Isadore Litman, P. G. Keith and J. H. Keith, which contract contemplated and provided for the purchase by the Liberty Oil Company, Incorporated, of oil and gas leases in the county of Butler, State of Kansas, reference to which contract is hereby made a part hereof, the same as though herein fully set out, and the same is hereto attached, marked Exhibit "A".

That at the time of the execution of said contract, a certain instrument in writing was entered into by the defendant The Condon National Bank, wherein it agreed to act under said contract and abide by and carry out its terms, reference to which instrument and agreement in writing is hereto made a part hereof and attached hereto, marked Exhibit "B".

That in accordance with, and under and by virtue of said Exhibits "A" and "B", plaintiff paid to the Condon National Bank, Coffeyville, Kansas, the defendant herein, on the 24th day of May, 1918, the sum of $100,000, which sum the said Bank now has in its possession and control.

That on the 27th day of May, 1918, these intervenors, in full compliance with the terms and conditions of said Exhibit "A", presented to the plaintiff an abstract to the property described in said Exhibit "A" showing a good and marketable title to all of such property in these intervenors. That an examination of said abstract was made by the Liberty Oil Company, Incorporated, plaintiff herein, and certain objections and exceptions, with respect to the same as presented, were made for and on behalf of the said Liberty Oil Company, Incorporated, a copy of such exceptions and objections as made is hereto attached as a part hereof, and marked Exhibit "C".

That none of said exceptions and objections as made by the plaintiff were good and valid exceptions or objections to the title as a good

and marketable title, or as in full compliance with the terms and conditions of said Exhibit "A".

That while said exceptions and objections as made by the plaintiff were not good or valid exceptions and objections to the title, as a good and marketable title, or as required by contract, and notwithstanding that, these intervenors had duly performed all of the conditions of said Exhibit "A" on their part to be kept and performed, they duly performed, met and complied with all of the exceptions and objections as made by the plaintiff to said title in Exhibit "C".

Wherefore, These intervenors pray that the plaintiff take nothing herein, and that these intervenors recover of said plaintiff as prayed for in their cross petition.

Cross-petition.

Said intervenors, for their Cross Petition, allege:

11 That the plaintiff, Liberty Oil Company, Incorporated, is a corporation, organized and existing under and by virtue of the laws of the State of Virginia, having its principal place of business at Alexandria, and is a resident, inhabitant and citizen of the State of Virginia.

That the defendant, The Condon National Bank, is a banking corporation, organized and existing under and by virtue of the laws of the United States relating to national banks, and has its place of business in the City of Coffeyville, Montgomery County, Kansas, and is a resident, inhabitant and citizen of the State of Kansas, and of the Third Division of the above entitled court.

That the Atlas Petroleum Company is a corporation, created and existing under the laws of the State of Oklahoma, and is a resident, inhabitant and citizen of the State of Oklahoma.

That C. M. Ball, Isadore Litman, P. G. Keith and J. H. Keith, and each and all of them, are citizens, residents and inhabitants of the City of Coffeyville, Montgomery County, Kansas.

That the amount in controversy in this action, exclusive of interest and costs, exceeds the sum or value of $3,000.00.

That heretofore and on the 24th day of May, 1918, the plaintiff, Liberty Oil Company, Incorporated, entered into a written contract with the Atlas Petroleum Company, a corporation, C. M. Ball, Isadore Litman, P. G. Keith, and J. H. Keith, which contract contemplates and provides for the purchase by the Liberty Oil Company, Incorporated, of oil and gas leases in the county of Butler, State of Kansas, reference to which contract is hereby made as a part hereof, the same as though herein fully set out, and the same is attached hereto marked Exhibit "A".

That at the time of the execution of said contract, a certain instrument in writing was entered into by the defendant, The Condon National Bank, wherein it agreed to act under said contract, abide by and carry out its terms, reference to which instrument and agree-

ment in writing is hereby made a part hereof, and attached to this petition, marked Exhibit "B".

That in accordance with and under and by virtue of said Exhibits "A" and "B", plaintiff paid to the Condon National Bank, Coffeyville, Kansas, the defendant herein, on the 24th day of May, 1918, the sum of $100,000.00, which sum the said Bank now has in its possession and control.

That on the 27th day of May, 1918, these intervenors presented to the plaintiff an abstract to the property described in Exhibit "A", showing a good and marketable title to all of said property
12 contracted for by the plaintiff, and described in said Exhibit "A" by said intervenors, and otherwise duly performed all of the conditions of said Exhibits "A" and "B" on their part, and there is no default on the part of these intervenors.

That notwithstanding the fact that these intervenors had duly performed their part of said contract, and that there is no default on their part, certain objections and requirements with respect to said title were made for and on behalf of the Liberty Oil Company, Incorporated, and submitted to these intervenors, a copy of which exceptions and objections as made, is hereto attached as a part hereof, marked Exhibit "C".

That none of said exceptions and objections were good or valid exceptions and objections to the title as presented as a good and marketable title, or as required by said Exhibit "A", yet notwithstanding such facts, these intervenors fully performed, met and complied with all of said exceptions and objections so made within the time and in the manner provided in said Exhibit "A", and fully corrected and remedied the title as objected to by the plaintiff in the exceptions and objections made to said title.

That these intervenors have fully complied with and duly performed all of the conditions of said Exhibit "A" on their part to be kept and performed, and tendered and offered to the plaintiff at the time and in the manner specified in said contract, a good and marketable title to all of said property, free from all liens, incumbrances, claims, indebtedness, litigation and contracts, which tender and offer these intervenors have at all times kept good and are now ready, able and willing and hereby offer to make good and deliver said title to the plaintiff herein, and that they are now entitled to receive the $100,000.00 deposited by the plaintiff with the defendant herein, and for judgment therefor, and for the further sum of $1,000,000.

Wherefore, These intervenors pray for judgment against the plaintiff herein for the sum of $1,100,000.00 and for an order directing the defendant herein to pay the $100,000.00 now in its possession, to these intervenors, for costs, and for general relief.

J. H. KEITH,
JOHN J. JONES,
Attorneys for Intervenors.

Filed in District Court Dec. 24, 1918.

Answer of the Plaintiff to the Cross-petition of the Intervenors.

13 The Plaintiff, Liberty Oil Company, Incorporated, a corporation, for its answer to the cross petition of the intervenors above named, denies and alleges:

1. That the cross petition of the said intervenors filed in this cause does not state facts sufficient to constitute a cause of action in favor of said intervenors and against this plaintiff, or to entitle the said intervenors to any relief in this cause.

2. That the plaintiff denies each and every allegation, averment or statement contained in said cross petition, excepting only those heretofore alleged and admitted in plaintiff's petition and those hereinafter expressly admitted.

3. For its further answer to the said cross petition the plaintiff alleges that heretofore and on the 24th day of May, 1918, the Liberty Oil Company, Incorporated, entered into a written contract with the intervenors, the Atlas Petroleum Company, a corporation; C. M. Ball, Isador Litman, P. G. Keith and J. H. Keith, which contract contemplated and provided for the purchase by the Liberty Oil Company, Incorporated, of oil and gas leases in the County of Butler, State of Kansas, reference to which contract is hereby made as part hereof the same as though herein fully set out, and the same is attached to the petition filed herein marked Exhibit "A".

4. That at the time of the execution of said contract a certain instrument in writing was entered into by the defendant, The Condon National Bank, wherein it agreed to act under said contract and abide by and carry out its terms, reference to which instrument and agreement in writing is hereby made a part hereof and attached to the petition filed herein marked Exhibit "B".

5. That in accordance with, and under and by virtue of the said Exhibits "A" and "B", plaintiff paid to The Condon National Bank, Coffeyville, Kansas, the defendant herein, on the 24th day of May, 1918, the sum of One Hundred Thousand ($100,000.00) Dollars, which sum the said Bank now has in its possession and retains the same from the plaintiff.

6. That on the 27th day of May, 1918, the second parties named in Exhibit "A" the intervenors herein, presented to the plaintiff a purported abstract to the property described in Exhibit "A". That within the time required by Exhibit "A" an examination of the title as presented was made by the Liberty Oil Company, Incorporated, and certain objections and requirements with respect to the same as presented were made for and on behalf of the Liberty Oil Company, Incorporated, and that such exceptions and objections were duly, and within the time provided for in Exhibit "A", submitted to the intervenors, and a copy of such exceptions were

sent to the defendant. A copy of such exceptions and ob-
14 jections is made part hereof as attached to the petition filed herein marked Exhibit "C".

7. That all of said exceptions and objections as made by the plaintiff were good and valid exceptions and objections to the title as presented as a good and marketable title as required by the contract. That as a more particular statement of part of the irregularities, defects and failures of title, the plaintiff states that the said abstract as presented by the intervenors, the second parties to Exhibit "A" showed the following state of facts: That in said abstract it appeared that on the 18th day of September, 1893 one J. E. Putnam was the holder of the record title to the south half of lot one (1), lot two (2), and the southeast quarter of the northwest quarter of Section thirty-one (31) Township twenty-six (26), Range five (5), Butler County, Kansas, and that on the 21st day of September, 1893, said Putnam made a deed to S. H. Standart, assignee, which deed recited that he, the said J. E. Putnam, was not the owner of said property and only held the title of the same for Crippen, Lawrence & Company, a partnership, and that the said Crippen, Lawrence & Company had on the 18th day of September, 1893, made a deed of general assignment for the benefit of their creditors to S. H. Standart as assignee, and that the deed which he, the said J. E. Putman, was then making was for the purpose of including in the assets of the said Crippen, Lawrence & Company, under said general assignment, the said property as an asset of said estate; that the said deed and conveyance from the said Putman to Standart was accepted by the said Standart as assignee for the benefit of creditors of the said Crippen, Lawrence & Company.

8. Plaintiff elleges that Crippen, Lawrence & Company were a partnership having their principal place of business in Arapahoe County, Colorado, and that the said general deed of assignment made by said parnership for the benefit of their creditors was made and filed in Arapahoe County, Colorado, and that jurisdiction over the said assignment was assumed and accepted by the District Court of Arapahoe County, Colorado, and under the direction of said court the said S. H. Standart as such assignee filed his bond for the faithful performance of his duties.

9. That on the 31st day of August, 1894, S. H. Standart, Assignee, made a deed to said property, together with other property, to Benjamin Jenkins; that the said purported conveyance made by S. H. Standart, Assignee, to Benjamin Jenkins was ineffective and void as a conveyance of title in that under said abstract as presented there was no showing that the said conveyance was made under and by vistue of any order of the District Court of Butler County, Kansas, or of any other court of competent jurisdiction, and that in fact the said conveyance was ineffective and void in that said
15 deed, if made by the said S. H. Standart, Assignee, was not made by him on any application to a court of competent jurisdiction, nor was the sale or the conveyance of said property made

upon the order of any court of competent jurisdiction as required by law in the State of Kansas.

10. That by reason of the said insufficient, defective and void conveyance, the title of Charles R. Nuttle who executed the oil and gas leases, intended to be sold and transferred in said contract Exhibit "A" was not a good and marketable title to the said property in that the title which the said Charles R. Nuttle purported to have in the said property arose from and was directly dependent upon the conveyance of S. H. Standart, Assignee, to Benjamin Jenkins as a good and legal and effective conveyance of the title to said property, and that the title of the intervenors, the second parties, to Exhibit "A" was not a good and marketable title to the oil and gas leases and to the oil and gas in said property or to the right to remove the same from said land for the same reason.

11. That the said objections more particularly herein set out, together with all other objections as set out in Exhibit "C" were duly and properly made as required by Exhibit "A," and that the said intervenors failed, neglected and refused to correct or remedy the title as objected to by the plaintiff in the exceptions and objections made to said title within the time provided in the said contract. That each and all of the objections made by the plaintiff to said title were valid objections, and each and all of the same destroyed the title of the intervenors to the said oil and gas leases and to the oil and gas in and under said property and to the right to remove same as good and marketable titles as required by said Exhibit "A," and that by reason of said defects, irregularities, and complete failure of title as made in the said objections and exceptions of the plaintiff, the title of the said interveners was not a good and marketable title as required by the said Exhibit "A."

12. Plaintiff further alleges that during the time provided for in said contract, and up until the time that demand was made, as hereinafter set out, upon the defendant to return to the plaintiff the said sum of One Hundred Thousand ($100,000.00) Dollars, said title of the intervenors to said property was not a good and marketable title as required by Exhibit "A," and was defective, irregular and insufficient as a good and marketable title as set forth in the exceptions and objections to said title hereinbefore referred to and said defects and failure of title were not corrected and remedied by the said intervenors as required by said contract and within the time therein provided.

13. That heretofore, and on the 11th day of July, 1918, the defendant and the intervenors were duly notified that the said
16 title was defective and insufficient as a good and marketable title for the reasons as hereinbefore stated, and demand was made upon the defendant to return to the plaintiff the said sum of One Hundred Thousand ($100,000.00) Dollars which it held, and which it, under said Exhibits "A" and "B," agreed to return to the plaintiff, and that the defendant thereupon refused to return said sum of money, and has converted and appropriated the said sum to

its own use to the damage of the plaintiff in the amount of One Hundred Thousand ($100,000.00) Dollars with interest at six (6) per cent from the 11th day of July, 1918.

14. Plaintiff further alleges that it has performed and done all things which it was to perform and do under said Exhibits "A" and "B" and within the time as therein provided, and is in no manner and form in default in any particular.

15. That the said intervenors have no right, title or interest in the said sum of One Hundred Thousand ($100,000.00) Dollars and that the plaintiff is entitled to the relief as prayed for in its petition fild in this action.

Wherefore, Plaintiff prays that the intervenors take nothing herein and that plaintiff recover as prayed for in its petition, and that it be adjudged and decreed that the intervenors have no interest or claim in the said sum of One Hundred Thousand ($100,000.00) Dollars and that plaintiff have such other and further relief as it may be entitled to in the premises.

H. E. KARR,
HOLMES, YANKEY & HOLMES,
Attorneys for Plaintiff.

Filed in District Court April 12, 1919.

Bill of Exceptions.

Be It Remembered, That at the November, 1919, term of the United States District Court for the District of Kansas, Third Division, sitting at Fort Scott, Kansas, and on Thursday, November 13th, 1919, the above entitled cause came on to be heard before Honorable John C. Pollock, Judge, a jury having been duly waived.

The plaintiff, The Liberty Oil Company, appeared by its solicitors, Messrs. Holmes, Yankey & Holmes.

The defendant, The Condon National Bank, appeared by Mr. John J. Jones, its solicitor.

17 Thereupon, Mr. Yankey, of counsel for the plaintiff, made to the court a statement of the case on behalf of plaintiff, as follows:

Statement of Case.

(By Mr. Yankey:) This suit was originally brought against the Condon National Bank. The petition discloses these facts:

On the 24th of June, 1918, a contract was made between The Liberty Oil Company, plaintiff in this suit, and Mr. J. H. Keith, P. G. Keith, the Atlas Petroleum Company, Mr. Ball and Mr. Littman. This contract was for the sale of an oil lease located in Butler County, Kansas. The consideration of the contract for the lease was one million one hundred and fifty thousand dollars. There was a

deposit made on the contract of one hundred thousand dollars which was placed in the Condon National Bank, under a separate agreement, by which the bank acknowldged the receipt of this money and agreed to pay it over to whoever was entitled to it under this contract. The contract of sale provided that an abstract of title was to be furnished to this property, showing a good and merchantable title, free and clear of all incumbrances, litigation and contests. They were to have seven days within which to examine this title after the title was submitted,—after the abstract was submitted. Then they were to have a reasonable time within which to comply with the defects that might appear in the title, not exceeding thirty days. An abstract was furnished on the twenty-sixth day of May. Plaintiff in the case had this title examined at Wichita by a firm in which I am interested, Holmes, Yankey and Holmes, and the title was found to be defective in an opinion which was written of the title. Copies of this opinion were sent to the Condon National Bank, to Mr. Keith, and to all of the interested parties.

Now there are various defects, attention to which *were* called in the opinion. Immediately it appeared that the principal controversy—or the controversy over which it seemed that the most difficulty would arise, arose from a situation like this: In the chain of title it seemed that a man by the name of Putnam amended the title. In 1893 he made a deed to a man named Standart, as an assignee for the benefit of creditors of Crippen, Lawrence & Company, representing in this deed that though it was in his name, it in fact belonged to Crippen, Lawrence & Company, and as they had made assignment for the benefit of creditors on a certain day, at their request he made this deed for the benefit of creditors of Crippen, Lawrence & Company to this man whose name was Standart. The next conveyance which
appears in the title was a deed by Standard, as assignee for
18 the benefit of creditors of Crippen, Lawrence & Company to a man by the nam of Jenkins. The next conveyance that appears in the title was a deed from Jenkins to a man named J. J. Crippen, Trustee. The next deed that appears was a conveyance from J. J. Crippen, Trustee, J. J. Crippen individually, and his wife, and an H. J. Crippen to a man by the name of McConnell. After that, by various conveyances the title came down to a man by the name of Nuttle. Nuttle made the oil and gas leases upon the property to Mr. Keith originally and Mr. Keith and a man by the name of McPherson, which is immaterial—their part of the title was all right. The objection to the title was that there was no showing on the record that the assignee for the benefit of creditors had obtained the authority of the court in the State of Kansas to make this conveyance. That was set out in the opinion in regard to the title. Thereafter there were various efforts to ascertain what was the exact condition in regard to this Crippen Lawrence Company,—what had happened—and there were various things attempted to be obtained. Later on there was a quit-claim deed obtained from the heirs; it seems both of the Crippens who were interested in this company of Crippen, Lawrence and Company had died, and quit-claim deeds were obtained from the heirs of these two Crippens, and there were affidavits furnished showing that these parties were the heirs of Crippen.

The title was refused by those deciding for the reason that they ad no title; that it remained either in the creditors or in the estate reated by this assignment for the benefit of creditors. And on the leventh of July, which was a little more than the thirty days, all arties interested in the matter were attempting to get this title traightened out—the title was definitely turned down and a demand nade upon the bank for the money; and the bank notified the laintiff in this case that it declined to turn over the money for the eason demand had been made upon it by other parties for the noney. Suit was brought against the bank and the bank came up nd said it had no interest in the money and asked to have these ther parties with the interest in the money interplead, and they ap- eared and set up their claims in this controversy.

By the Court: The bank got the money in court.

By Mr. Yankey: The money is in the registry of the court.

By the Court: The bank discharged.

By Mr. Yankey: At the time the application was made a question of liability for interest was suspended until this hear- ng, until the matter could be finally determined.

The evidence will further show in connection with this matter that he Liberty Oil Company s ain oil company which is interested in the roduction of oil, and that the way they operate their business, they uy these properties and issue against them securities. These se- urities are examined, are certified to by their attorneys, and then pon the certification of their attorneys that the proceedings are egal and the title all right, these securities are handled by the bank- ng institution with which they do business. At this time the capital sue committee was operating and it had to be submitted to them, nd therefore it was under these conditions very essential that the itle which they obtained, or the title which they could accept, should e an absolutely good merchantable title.

Thereupon, Mr. Jones, of counsel for the defendant, made to the ourt a statement of the case on behalf of the defendant.

Statement of the Case.

(By Mr. Jones:) If the court please, I think Mr. Yankey has tated the substance of the controversy which is at issue in this case. he question, as we understand it, is, as to whether or not the title urnished is a title that complies with the contract executed between hese parties. There is no charge on the part of anybody of bad aith or anything of that kind; but purely a question as to whether he title furnished was the title required by the contract. And if it as, the money, as we understand it, belongs to the seller, Keith nd his associates; if that title was not furnished, then, of course, the oney belongs to the oil company. I think that is the only real issue n this case.

By the Court: Is the money deposited with the bank, now here in

court, does that go to the depths of this controversy? An awarding of the funds to Mr. Keith and his associates, does that require a compliance with the contract by them?

By Mr. Jones: Yes. There is one further matter.

By the Court: How does this property stand now? What has been done with it meanwhile?

By Mr. Jones: We have simply had possession of the property and taken care of it. The title to the property was placed in escrow in the Condon National Bank, with this one hundred thousand dollars, and we have retained possession of the property, although, as we contend, our title complies with the contract. Now the contract provided that in the event of a failure of the oil company to take this property, if the title was such as required, then the one hundred thousand dollars should be treated as liquidated damages, and the one hundred thousand dollars was put in the bank; and since, by order of the court, has been put in the registry of this court.

By the Court: I will want to see the contract; it all depends on the contract.

By Mr. Yankey: I might say, so there won't be any misunderstanding, there were various objections to the title. As the court will understand, knowing how these matters arise, this objection seemed to be the one over which the most serious objection might arise. The abstract was furnished, and furnished the last time rather hurriedly, and we are not waiving anything, if the title has not been complied with in other respects. But I am not prepared to say, because the abstract has been in their possession; but that will appear. I just make the explanation so there will be no misunderstanding about it.

By the Court: Who will you have first?

Thereupon, the plaintiff, to maintain the issues upon its part, produced and offered evidence, as follows:

By Mr. Hammond: We agree, Mr. Keith, Mr. Jones, Mr. Yankey, and myself, there are a number of letters and so forth, we agree as to the identification of the letters.

By the Court: Very well.

By Mr. Yankey: We offer in evidence Exhibit No. 1, the identification of which has been waived, the original contract between the parties.

21 (Exhibit No. 1, above referred to, offered and received in evidence, is, as follows:)

EXHIBIT 1.

(Same as Exhibit "A" of Petition.)

Know all men by these presents:

That this contract made and entered into this, the 24th day of May, 1918, by and between the Liberty Oil Company, Incorporated, a corporation created and existing under the laws of the State of Virginia, with its principal office in the city of Alexandria, Virginia

and with its main business office at 62 Cedar street, in the city of New York, state of New York, the party of the first part, and the Atlas Petroleum Company, a corporation created and existing under the laws of the state of Oklahoma, with its principal office at 1012 Baltimore Avenue, in the city of Kansas City, State of Missouri, and C. M. Ball, Isador Litman, P. G. Keith and J. H. Keith, all of Coffeyville, Kansas, the parties of the second part.

Witnesseth: That, whereas, the said parties of the second part are the owners of the following described oil and gas leases, together with the lease-hold estate thereby created and the wells, casing, tubing, rods, lines, pumping outfits, derricks, tanks, bailers, engines, machines, machinery, material fitting houses, and structures thereon situated and used in connection with the operation of the same as an oil producing property, including the undivided one-fourth (¼) interest in the water pump station situated on the — farm and — interest in the water lines leading from said station to said leases hereinafter described, said leases being situated in Butler County, Kansas, and bounded as described as follows, to-wit:

South One Half (S. ½) of Lot One (1); all of Lot Two (2); and the Southeast Quarter (S. E. ¼) of the Northwest Quarter (N. W. ¼) otherwise described as the South One Half (½) of the Northwest Quarter (N. W. ¼) of the Northwest Quarter (N. W. ¼) and the South One-Half (½) of the Northwest (¼) of Section 31, Township 26, Range 5, containing One Hundred Acres (100) more or less; and the Northeast Quarter (N. E. ¼) of Section 31, Twp. 26, Range 5, containing 160 acres, more or less.

Now, therefore, this agreement witnesseth: That for and in consideration of the premises and of the agreements hereinafter contained and the sum of One Dollar ($1.00) cash in hand, paid by said first party, the receipt whereof, being hereby acknowledged by said second party, it is hereby agreed by and between the parties hereto as follows, to-wit:

22 1. That said parties of the second part have this day sold unto the said parties of the first part said leases in so far only as they apply to the Northeast Quarter (N. E. ¼) of Section 31, Township 26, Range 5; and the South One Half (S. ½) of the Northwest Quarter (N. W. ¼) and the South One Half (S. ½) of Lot One (1) and Lot Two (2) in said Section 31, Twp. 26, Range 5; especially reserving the remainder of the land described in said leases, to-wit: it being the intention to specifically except the sixty (60) acres cov-red by one of the said leases owned by J. H. Keith, C. M. Ball, Isador Litman, and P. G. Keith, same to be reserved to said Keith, Ball, Litman, and Keith and no part of same is included in this sale, for the sum of One Million One Hundred Fifty Thousand Dollars ($1,150,000.) to be paid as hereinafter provided, subject, however, to each and all of the terms, conditions, and agreements of this contract.

2. That said party of the first part has this day deposited with th Condon National Bank at Coffeyville, Kansas, the sum of One Hu dred Thousand Dollars ($100,000.00) simultaneously with the d posit with said bank of this agreement; said sum of One Hundre Thousand Dollars ($100,000.00) and said assignments, transfe and conveyances to be held by said bank in escrow and shall be d livered by said bank to the parties and upon the conditions as pr vided in this contract; said Condon National Bank is hereby e pressly authorized, empowered and directed by said parties here to act in the manner herein provided for.

3. That said parties of the second part shall furnish said par of the first part an abstract of the title of said property showing goo and marketable title to said property vested in said second partie free and clear of all liens, incumbrances, claims and indebtedne and free of pending litigation and also free of all contracts affectin said property for the sale of said oil that are not subject to cancell tion on not to exceed six months' notice by the said second parti or their assigns; said second parties shall deposit in said bank to b held in escrow and delivered as herein provided apt and proper dee of assignment and transfers duly executed and acknowledged suf cient in law and equity to completely vest in said first party th title of all of said property, free from all liens, encumbrances, clai and indebtedness of every kind and character, (except as hereinaft expressly provided) and with covenants of special warranty; sa second parties shall furnish said first party with satisfactory eviden of the authority of the officio of said Atlas Petroleum Company execute, acknowledge, and deliver said deed of assignment and tran fer on behalf of said Atlas Petroleum Company.

4. The first party shall be entitled to 7 days in which
23 examine the title of said second parties to said property an the said deeds of assignment and transfers and the said autho ity of said officios of said Atlas Petroleum Company, from and aft the date said abstract of title and said evidence of authority is deli ered to said first party's agent.

5. In the event said examination of title by said first party sha show that said second parties have good and marketable title, fr from all liens, encumbrances, claims, indebtedness, litigations an contracts (except as herein expressly provided) and that said dee of assignment and transfers and said authority of said officer of sai Atlas Petroleum Company are in compliance with the terms of thi contract; said first party shall pay unto said bank the balance of sai purchase price, to-wit: One Million and Fifty Thousand ($1,50 000.00) whereupon said bank shall deliver unto said first party or i agent said deeds of assignments and transfers and said bank sha pay over to said second parties as the interest may appear, the sai sums deposited with it hereunder; and thereupon the said secon parties shall deliver unto the said first party or its agent the actu possession of the property first above described.

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6. In the event the examination of said title shall show a good and marketable title to all said property in said second parties free from all liens, encumbrances, claims, indebtedness, litigation and contract (except herein expressly provided) and said deeds of assignment and transfer and said authority to said officers of said Atlas Petroleum Company as hereinbefore provided and said First party shall refuse to pay the said sum of One Million and Fifty Thousand ($1,050,000.00) at the expiration of the days hereinbefore provided for, the said One Hundred Thousand Dollars ($100,000) shall be delivered by said bank to said second parties as liquidated damages and this contract shall become null and void; said bank shall thereupon return to said second parties said deeds of assignments and transfers.

7. It is understood that the purchaser shall assume the payment of the actual drilling of wells Nos. 7 and 8 on said property and shall pay for the oil engines put on said property since April 14, 1918, and wells Nos. 1, 4 and 6 and shall also return to the National Refining Company the string of Seventeen (17) pound 5 3-16-inch casing, borrowed from said National Refining Company. The purchaser shall further assume the payment to the lessor of the Six Thousand Dollars ($6,000.00) provided for in the lease in the event said sum shall become due and payable under the terms of said lease.

8. In the event the examination of said title of said second parties by the first party shall disclose that same is not a good and marketable title to all of said property or that said property is not free from all liens, encumbrances, claims, indebtedness, litigations, and contracts (except as herein before expressly provided) or that said deeds of assignments and transfers and said authority of said officers of said Atlas Petroleum Company are not in accordance with and in compliance with the terms and provisions of this contract, then the said first party shall so notify second parties and they shall have a reasonable time, not to exceed thirty days in which to perfect said title, etc.; but should second party neglect or refuse to so perfect its said title within said thirty days the one Hundred Thousand Dollars ($100,000.00) shall be returned to the first party and this contract shall become void and each party to this contract shall be absolved from any and all liability under the same, or from any damages for the non-fulfillment thereof.

In Witness Whereof, — hereunto set — hand and seal the day and year first above written.

LIBERTY OIL COMPANY, INCORPORATED,
By EDWARD M. BURDETTE,
Its President.
ATLAS PETROLEUM COMPANY,
By JOHN J. McPHERSON,
Its President.

CLOSE IN CENTER

Attest:
[SEAL.] B. E. BUSH,
Secretary.
P. G. KEITH.
C. M. BALL.
J. H. KEITH.
ISADOR LITMAN.

By Mr. Yankey: I now offer in evidence, Exhibit No. 2.

(Exhibit No. 2, above referred to, offered and received in evidence is, as follows:)

EXHIBIT 2.

(Same as Exhibit "B" of Petition.)

Coffeyville, Kansas, May 24, 1918.

Received of Liberty Oil Company, Inc. draft bearing even date herewith drawn by Liberty Oil Co. Inc., by Edward M. Burdett President, at Sight on A. B. Leach & Company, 62 Cedar Street, New York City, N. Y., payable to the Condon National Bank of Coffeyville, Kansas, the proceeds of said draft to be held by the undersigned bank and disposed of in accordance with the terms of that certain contract dated May 24, 1918, made between Liberty Oil Co. Inc., and Atlas Petroleum Company, C. M. Ball Isador Litman, P. G. Keith and J. H. Keith, a copy of which contract has been delivered to the undersigned Bank simultaneously with the delivery of said draft.

THE CONDON NATIONAL BANK.
F. S. MITCHELL,
Vice-President.

(Recess of court until two o'clock P. M.)

(Two o'clock P. M.)

By the Court: I apprehend that you gentlemen understand what is involved in this litigation the same as I do. I make this observation for the purpose of being sure about it. The property itself is in no wise involved in this litigation. That is to say, if this title was as described in this contract, a good marketable title, free from incumbrances, liens and claims, as described in this contract, then if the plaintiff has failed to take it, damages for breach of the contract are liquidated under this contract, and that one hundred thousand dollars is the damage.

By Mr. Hammond: That is correct, sir.

By Court: Now, on the other side, if the title was not the title that was contracted for here, then the party depositing the money has the right to refuse to take it and take down the one hundred thousand dollars, and that ends the whole thing.

By Counsel: That is as I understand it.

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By the Court: So this law suit reaches no further than the one hundred thousand dollars; its consequences might have a further effect, but not involved in this suit. You may proceed with the trial.

By Mr. Yankey: We offer in evidence as Exhibit No. 3, the identification of which is waived, the abstract of title which
26 was presented under this contract by the intervening defendants, as the abstract of title to the property involved in this controversy. In connection with this offer the offer relates to such part of the abstract as was certified, to the date, at which time the abstract was offered. I speak of that because there were certain extensions.

By the Court: What date was it?

By Mr. Yankey: The 26th day of May 1918.

Mr. Jones, do you admit the abstract was offered on the 26th day of May?

By Mr. Jones: I simply don't know what day.

By Mr. Yancey: Well, you can ask Mr. Keith. It has no purpose in the matter except fixing the date.

Mr. Jones, to Mr. Keith: Do you know the day the abstract was offered?

By Mr. Keith: I assume it was the 26th day of May.

By Mr. Yankey: It being admitted in open court the abstract, Exhibit No. 3, was delivered to the plaintiff on the 26th day of May, 1918.

By Mr. Yankey: I offer in evidence, Exhibit No. 4, the identification of the instrument being waived, being carbon copy of the original opinion on this title.

By the Court: Very well.

(Exhibit No. 4, above referred to, offered and received in evidence, is as follows:)

EXHIBIT 4.

(Same as Exhibit "C" of Petition.)

May 31, 1918.

27 For Liberty Oil Company:

We have examined the title to the Northeast Quarter (N. E. ¼), the South Half of Lot One (1), Lot Two (2) and the Southeast Quarter (S. E. ¼) of the Northwest Quarter (N. W. ¼) all of Section Thirty-one (31), Township Twenty-six (26) South, Range Five (5) East in Butler County, Kansas, as shown by the abstract submitted made by J. C. Hoyt & Company of El Dorado, Kansas, containing entries numbered one to seventy-two both inclusive and certified to the 27th day of May, 1918.

We have also made a search and examination of the records and files found in the county offices of Butler County, Kansas.

We certify that the fee title free and clear of all liens and encumbrances, subject to the exceptions hereinafter noted, to this property is in C. R. Huttle.

CLOSE IN CENTER

We further certify that the oil and gas rights in this property are in John H. Keith, C. M. Ball, P. G. Keith, Isador Litman and The Atlas Petroleum Company, a corporation, subject to the exceptions hereinafter noted.

The abstract to this property is incomplete and insufficient in not containing the following instruments:

(*a*). In Volume I of Mortgages at page 362 there appears an oil and mineral lease made to John Donnelly by John Pierce and wife, dated November 16, 1877, and made for the term of fifty years.

(*b*). In Volume 8 of Mortgages, page 510, there is a mortgage made by John Pierce and wife to A. D. Wear, dated September 1, 1880.

(*c*). In Volume Misc. 29, page 16, there is an assignment of the oil and gas rights by J. H. Keith to C. M. Ball and P. G. "Heithm" presumably intended to be "Keith."

(*d*). In Volume Misc. 29, page 102, there is an assignment from P. G. Keith to Isador Litman of oil and gas interest in this property.

(*e*). In Volume 101 of Mortgages, page 527, there is a marginal release of the mortgage from C. R. Nuttle and wife to Clay Shriver for $16,200.00, and which mortgage appears in entry No. 60 of the abstract.

All of these instruments together with marginal notations should be put on the abstract.

The oil lease to John J. Donnelly relates to the Northeast
28 Quarter (N. E. ¼) of 31-26-5 and is unreleased. Its term has not yet expired, but the rights of the lessee were foreclosed in a foreclosure proceeding which appears in the abstract. In addition to this, it appears that this lease was made before the lessor had any interest in this property. It further appears that by reason of delays in development and exploration of the property the lease has been abandoned.

In the assignment referred to in paragraph "*c*" above, the assignment is made to C. M. Ball and P. G. "Heithm." This was evidently intended to be P. G. "Keith" for reference in the instrument shows this to be the intention. However, it will be necessary to make a correction of this record. If this was an error of the Register of Deeds in copying the instrument, the original instrument should be submitted to the Register of Deeds to have the records corrected.

At entry No. 22 there is a trust deed made to Timothy B. Sweet, Trustee. (The abstract shows "Treasurer." This should be corrected to "Trustee"). This trust deed is in the nature of a mortgage and is released at entry No. 23 by Timothy B. Sweet, Trustee. The release should have been made jointly by the Trustee and beneficiary. It is, however, our opinion that this is such an irr-gularity that the lapse of time has destroyed its effectiveness as a cloud on the title.

In the chain of title to the South Half of Lot 1, Lot 2 of the S. E. ¼ of the N. W. ¼ of Section 31, Township 26, Range 5, there appears at entry No. 42 of the abstract a deed made by S. H. Standart, assignee, who it appears from other instruments connected with this title was the assignee for the benefit of the creditors of Crippen, Lawrence & Company. This deed is made to Benjamin Jenkins. No showing is made in the abstract and nothing appears in the records of a proper order of sale made by the District Court of Butler County, Kansas, as is required by law in a valid conveyance of this character. This deed is ineffective as a conveyance of title and the source of title of C. R. Nuttle is dependent upon the deed as a conveyance of title. The title acquired by the assignee so far as the records show, still remains in him. This title will have to be acquired in order to make a merchantable title to the property in question, and also to make such a title to the oil and gas rights to this property.

It appears from entry No. 66 of the abstract that Lot 1, which is also described as the northwest of the northwest of 31-26-5, is subjec- to an easement or right of way made to the Carter Oil Company giving it the right to construct, maintain, and operate at any place abutting said land, pipe lines and telephone and telegraph lines in connection with said pipe lines.

29 At entry No. 40 appears a deed made by J. E. Putnam to Stephen H. Standart, assignee. In connection with this deed there is nothing to show whether Mr. Putnam was married or single at this time. If he was married, his wife should have joined in the deed, and it will be necessary to make a showing as to his marital status on September 21, 1893, the date of the deed.

The oil and gas rights to the northeast quarter of 31-26-5 are held under the lease dated December 16, 1915, which appears in the abstract at entry No. 64. This lease was made to John H. Keith of Coffeyville, Kansas. The term of the lease is two years, or as long thereafter as oil and gas or either of them is produced from said land by said Keith, his successors or assigns. The purchaser of this property should satisfy himself that oil or gas was produced from this land prior to December 16, 1917. The purchaser should also be furnished receipts or satisfactory evidence that all rentals were paid when due on this property. The title to this lease on the northeast quarter now stands in the name of The Atlas Petroleum Company, a corporation, which owns one-half; John H. Keith, who owns four-twelfths; C. M. Ball, who owns one-twelfth, and P. G. Keith, who owns one-twelfth. There is some confusion as to the exact interests owned by these parties by reason of inexact expressions used in conveying the interests. Therefore, in a conveyance all parties should join as conveying the entire interest. Isadore Littman and Isador Litman, presumably the same party, owns an interest in the adjoining property and because of uncertainty of expression, by an interpretation might own an interest in the lease on the northeast quarter. Therefore, he should also join in this conveyance. The royalty to be paid the landowner under the above lease is one-eighth part of all oil produced and saved from the land,

delivered free of cost in the pipe line to which the lessee may connec its wells, also one-eighth of the gas.

The oil and gas rights with respect to the south half of Lot 1 Lot 2 and the southeast quarter of the northwest quarter of 31-26- are owned by J. H. Keith, P. G. Keith, C. M. Ball, Isadore Littman and The Atlas Petroleum Company under a lease made August 2 1917, by Chas. R. Nuttle and wife to John H. Keith and John McPherson, heretofore assigned to the above named parties. Th lease is for the term of five years for a rental of $100.00 per y- The oil royalty is the equal one-eighth part of all the oil produce and saved from the leased premises, also one-eighth of the gas. Th lease further provides that in case a well is drilled upon said lan that will produce 500 barrels of oil per day, that the lessee shall pa the lessor the further sum of $6,000.00 out of one-half of the fir oil produced. In connection with this lease the purchaser shoul receive satisfactory evidence of the payment of all rentals hereto fore due under this lease.

30 The purchaser should ascertain that all improvements upo the property covered by this abstract, in connection with th drilling and operating for oil and gas within the last four month have been fully paid for for the reason that if such claims have n been paid they may result in materialmen's or mechanic's lien again the improvements put upon the property.

After the corrections in the title herein called for have been mad the abstract should be again submitted to us for our further a proval.

HOLMES, YANKEY & HOLMES,
Attorneys.

By Mr. Yankey: We offer in evidence Exhibits 5, 6, 7, 8, 9, an 10, the identification of the instruments being waived.

By the Court: These are letters that passed between the parti with reference to this abstract of title?

By Mr. Yankey: The letter that accompanied the opinion, the various defendants interested in this matter. The letters we all the same with the exception of a letter to Mr. Keith, and also letter to the Condon National Bank.

(Exhibit No. 5, above referred to, offered and received in e dence, is as follows:)

EXHIBIT 5.

May 31, 1918.

Mr. J. H. Keith,
Coffeyville, Kansas.

DEAR SIR:

In regard to the title to oil leases on the Nuttle property in But County, Kansas, we wish to advise that examination has been ma of this title and that the same has been found not merchantable a defective as you will note from the copy of the attorney's opini which we are enclosing in this letter.

This notice is given you in accordance with provision of the contract, and we have also notified the other persons interested
31 and associated with you in this transaction, together with the Condon Na-ional Bank at Coffeyville, Kansas.

In accordance with your suggestion we have written to Mr. Dana at Denver giving him such information and suggestions as we thought might help him in connection with looking up and correcting this title. If you hear from him please advise Mr. Burdette at the Eaton Hotel, Wichita, Kansas.

This letter will be notice to you that we cannot accept the title in the condition that it is now in and that it will have to be corrected and made good in accordance with the terms of the contract.

Very truly yours,

LIBERTY OIL CO.,
By HOLMES, YANKEY & HOLMES,
Its Attys.

C. G. Y.-W.

Enc.

By Mr. Yankey: I would like to read this letter, Exhibit No. 6, dated May 31, 1918.

(Exhibit No. 6, above referred to, offered, received and read in evidence, is as follows:)

EXHIBIT 6.

May 31, 1918.

The Condon National Bank,
Coffeyville, Kansas.

GENTLEMEN:

In connection with the contract and escrow arrangement between The Liberty Oil Company and The Atlas Petroleum Company, C. M. Ball, J. H. Keith, Isadore Litman, P. G. Keith, we wish to advise that the abstract was submitted to the agent of the Liberty Oil Company on May 26th. This abstract has been examined and the title has been found not merchantable and defective as you will note in the copy of the attorney's opinion sent you herewith. You will, therefore, hold the money now on deposit in escrow with you until this title shall be completed and made good in accordance with the contract. We have sent notice of the defects in the title to the other parties interested in this matter.

Mr. J. H. Keith was in Wichita in conference with us with regard to this title and is now trying to arrange to correct the same.
32 Whenever this title is completed we will send you written notice of the same.

Yours truly,

LIBERTY OIL CO.,
By HOLMES, YANKEY & HOLMES,
Its Attys.

G. G. Y.-W.
Enc.

By Mr. Yankey: Just to read a sample of the letters, here is a letter to the Atlas Petroleum Company, Exhibit No. 7, which I will read.

(Exhibit No. 7, above referred to, offered, received and read in evidence, is as follows:)

EXHIBIT 7.

May 31, 1918.

Atlas Petroleum Co.,
No. 1012 Baltimore Ave.,
Kansas City, Missouri.

GENTLEMEN:

In regard to the title to oil leases on the Nuttle property in Butler County, Kansas, we wish to advise that examination has been made of this title and that the same has been found not merchantable and defective as you will note from the copy of the attorney's opinion which we are enclosing in this letter.

This notice is given you in accordance with provision of the contract, and we have also notified the other persons interested and associated with you in this transaction, together with the Condon National Bank at Coffeyville, Kansas.

Mr. J. H. Keith was in Wichita yesterday in connection with arranging for the correction of the title and is now trying to make arrangement for the correction of the same.

This letter will be notice to you that we cannot accept the title in the condition that it is now in and that it will have to be corrected and made good in accordance with the terms of the contract.

Very truly yours,

LIBERTY OIL CO.,
By HOLMES, YANKEY & HOLMES,
Its Attys.

C. G. Y.-W.
Enc.

33 By Mr. Yankey: The letters to each party were of that same character.

(Exhibits Nos. 8, 9 and 10, above referred to, offered and received in evidence, are as follows:)

EXHIBIT 8.

May 31, 1918.

Mr. Isadore Litman,
Coffeyville, Kansas.

DEAR SIR:

In regard to the title to oil leases on the Nuttle property in Butler County, Kansas, we wish to advise that examination has been made of this title and that the same has been found not merchantable and

defective as you will note from the copy of the attorney's opinion which we are enclosing in this letter.

This notice is given you in accordance with provision of the contract, and we have also notified the other persons interested and associated with you in this transaction, together with the Condon National Bank at Coffeyville, Kansas.

Mr. J. H. Keith was in Wichita yesterday in connection with arranging for the correction of the title and is now trying to make arrangement for the correction of the same.

This letter will be notice to you that we cannot accept the title in the condition that it is now in and that it will have to be corrected and made good in accordance with the terms of the contract.

Very truly yours,

LIBERTY OIL CO.,
By HOLMES, YANKEY & HOLMES,
Its Attys.

CGY-W.
Enc.

EXHIBIT 9.

May 31, 1918.

Mr. C. M. Ball,
Coffeyville, Kansas.

DEAR SIR:

In regard to the title to oil leases on the Nuttle property in
34 Butler County, Kansas, we wish to advise that examination has been made of this title and that the same has been found not merchantable and defective as you will note from the copy of the attorney's opinion which we are enclosing in this letter.

This notice is given you in accordance with provision of the contract, and we have also notified the other persons interested and associated with you in this transaction, together with the Condon National Bank at Coffeyville, Kansas.

Mr. J. H. Keith was in Wichita yesterday in connection with arranging for the correction of the title and is now trying to make arrangement for the correction of the same.

This letter will be notice to you that we cannot accept the title in the condition that it is now in and that it will have to be corrected and made good in accordance with the terms of the contract.

Very truly yours,

LIBERTY OIL CO.,
By HOLMES, YANKEY & HOLMES,
Its Attys.

CGY-W.
Enc.

EXHIBIT 10.

May 31, 1918.

Mr. P. G. Keith,
Coffeyville, Kansas.

DEAR SIR:

In regard to the title to oil leases on the Nuttle property in Butler County, Kansas, we wish to advise that examination has been made of this title and that the same has been found not merchantable and defective as you will note from the copy of the attorney's opinion which we are enclosing in this letter.

This notice is given you in accordance with provision of the contract, and we have also notified the other persons interested and associated with you in this transaction, together with the Condon National Bank at Coffeyville, Kansas.

Mr. J. H. Keith was in Wichita yesterday in connection with arranging for the correction of the title and is now trying to make arrangement for the correction of the same.

This letter will be notice to you that we cannot accept the
35 title in the condition that it is now in and that it will have to be corrected and made good in accordance with the terms of the contract.

Very truly yours,

LIBERTY OIL CO.,
By HOLMES, YANKEY & HOLMES,
Its Attys.

CGY-W.
Enc.

By Mr. Yankey: We offer in evidence Exhibit No. 11, a letter dated May 31, letter transmitting the abstract to Mr. Keith.

(Exhibit No. 11, above referred to, offered and received in evidence, is as follows:)

EXHIBIT 11.

May 31, 1918.

Mr. J. H. Keith,
Coffeyville, Kansas.

DEAR SIR:

We are enclosing you herewith the abstract of title which we presume you will want in order to complete the title.

We are also enclosing you copy of letter which we sent to Mr. Dana at Denver today.

Yours truly,

LIBERTY OIL CO.,
By HOLMES, YANKEY & HOLMES,
Its Attys.

CGY-W.
Enc.

By the Court: Let me ask you a question; perhaps we can narrow this. Is there any contention on the part of the plaintiff that there were any liens, incumbrances, claims or indebtedness on the property?

By Mr. Yankey: Nothing except as stated in the opinion, there was an unreleased mortgage; but I think there was a release on record; and there were other irregularities the abstract did not disclose that we called their attention to in that opinion.

36 By the Court: Well, are you now relying on that provision of the contract, that is, that it was not kept—that there were liens, incumbrances, claims or indebtedness, or pending litigation that rendered the title not good?

By Mr. Yankey: No; there weren't any.

By the Court: You use in your letters the term "merchantable title," now the contract uses two words: a "good and marketable" title. Now, do you agree—do counsel agree that the term merchantable title and marketable title mean precisely the same thing in the law?

By Mr. Hammond: They do so far as we are concerned. Don't think there is any doubt about it.

By the Court: Do you agree that is true, Mr. Jones?

By Mr. Jones: No, I wouldn't want to agree to that; but the Supreme Court of Kansas has definitely defined what a marketable title is in Kansas.

By the Court: But I was just seeing how far we can agree. I see no reason for any distinction between a merchantable title and a marketable title. Now, if there is any in the law I want to hear from you. Now this says, "good and marketable" which I apprehend is a stronger word than marketable. Anyhow, you have used here the two expressions, "good and marketable." I notice you use in your letters the word "merchantable" and if there is any distinction between marketable and merchantable, I want to know it.

By Mr. Yankey: There is not.

By the Court: Now the question is whether the sellers presented to you an abstract showing a good and marketable title; if so, you are obligated to take this property.

By Mr. Yankey: Yes, Your Honor.

37 By Mr. Hammond: Or pay the liquidated damages. The contract is in the alternative.

By the Court: So far as this case is concerned, yes. But there might be some breach farther than that. I am not deciding that. The reason I examined the contract was to see whether that question was in this case or not.

By Mr. Hammond: I would suggest, your Honor, that opinion already offered in evidence, if your Honor will look at that, it will give your Honor an idea about this thing which would take some minutes to explain otherwise.

By the Court: Very well.

By Mr. Yankey: Exhibits numbered 12 to 23, the identification of the same being waived, are now offered in evidence.

By the Court: Very well.

(Exhibits 12 to 23, inclusive, above referred to, offered and received in evidence, are as follows:)

EXHIBIT 12.

R. L. Holmes. Chas. G. Yankey. W. E. Holmes.

Law Offices of

Holmes, Yankey & Holmes,

Suite 506 Fourth Natl. Bank Bldg.,

Wichita, Kansas.

June 6, 1918.

Mr. J. H. Keith,
Coffeyville, Kans.

DEAR SIR:

We have received a letter from Dana, Blount & Silverstein of Denver in regard to the title on the Nuttle lease. We are enclosing you herewith a copy of this letter which we received.

38 The situation with respect to this title is not improved by the facts the proceedings disclose. You will note from Mr. Dana's letter that Crippen, Lawrence & Company were not re-established in business and, therefor, it cannot be said that the title which failed to pass by the assignee's deed, reverted to Crippen, Lawrence & Company and the members of this firm. The situation is not exactly clear as to who would own this title at this time. Of course, those who would be entitled to it or the benefits of it would be the creditors of Crippen, Lawrence & Company. The exact completion of the title is so much in doubt that we do not wish to be understood as expressing an opinion with respect to that matter. We do say, however, that the information brought forth in Mr. Dana's letter is such that the title is not made good by the facts which appear in the proceedings at Denver. It appears that an order of sale was obtained in the District Court at Denver, but, of course, under the decisions of our Supreme Court this has no force and effect as to property located in this State.

We do not understand why this law firm at Denver sent us a bill for their services, for in writing them about the situation we did it only to assist you in ascertaining the condition of the title. We are, therefore, enclosing you the bill which they sent us, and trust that you will write to this firm and explain the situation with respect to our interest in the matter.

If you have any further suggestions in regard to making this title good, we would be glad to hear from you and give the same our careful consideration.

Very truly yours,

HOLMES, YANKEY & HOLMES.

C. G. Y.-G.

EXHIBIT 13.

Mr. Edward Burdette,
Eaton Hotel,
Wichita, Kansas.

June 11, 1918.

DEAR MR. BURDETTE:

It will probably be a few days before I can get over. I have had some matters at Coffeyville that have kept me here, and will for a day or two yet.

39 I will notify you when I can come, and I trust we can get things straightened out.

Yours truly,

J. H. K.-M. A. C.

——— ———.

EXHIBIT 14.

Mr. Edward W. Burdette,
Eaton Hotel,
Wichita, Kansas.

June 18, 1918.

MY DEAR MR. BURDETTE:

I am yet trying to get my abstract straightened out. It seems that the abstractors at Eldorado are rather careless. I have sent this one over there twice since I was over, and I have not got it complete, still. They sent it back each time with some of the things left out.

Outside of the statutes of limitations and the estoppel, this seems to have resolved itself largely to the question of whether or not the Colorado statutes governing assignees is practically the same as ours. I am trying to inform myself on that proposition. It may be that you or Mr. Yankey may have access to a Colorado statute of the vintage of 1894, and examine whether or not the statute is similar to ours, or rather whether the statute, in this regard, is essentially like ours. If I correctly understand the reading of the decisions of 41 and 58 Kansas, that is what it has resolved itself into. However, we ar- endeavoring in a way, to meet Mr. Yankey's objections to the abstract, and will probably know whether we can met those objections within the next few days.

I thought I would not come over there until I had something definite to propose.

I was over to the lease Saturday, and we are making arrangements to drill in the wells. I was thinking of locating No. 9 between No. 8 and the west line of the 160, and I thought I would get ready to go to drilling this in. I assume that in the event you took the property, that you would want to make that location, anyway.

I would like to hear from you relative to this, and oblige,

Yours truly,

J. H. K.-M. A. C.

——— ———.

EXHIBIT 15.

June 26, 1918.

Mr. Edward W. Burdette,
Eaton Hotel,
Wichita, Kansas.

DEAR MR. BURDETTE:

I feel ashamed to tell you that I am not going to be able to get over there tomorrow. I have had a man out getting some Quit Claim Deeds. He wired me that he had them, but he came in without them, and told me they would not get here until Saturday; in fact, he came in without one of them.

They might get in Friday night; if so, I will come over there Saturday; if not, I will be there some time Sunday—Sunday night, at the very outset.

I am very much disappointed, as I was led to believe that everything would be here. I hope the delay is not working on your nerves, as I assure you that I am doing the very best I can.

Yours truly,

J. H. K.-M. A. C.

I intend being there Saturday.

EXHIBIT 16.

July 2, 1918.

Holmes, Yankey & Holmes, Attorneys,
First National Bank Building,
Wichita, Kansas.

GENTLEMEN:

Yesterday afternoon I wrote you a lead pencil letter, and told you in that letter that I would write you again today.

I feel that by this time you have gone into the matter some, yourself, and discovered that there is absolutely no question about the fact that the reversionary interests, if any there be, in this matter, would be in the hands of the assignor. That is the universal rule, so far as I have been able to ascertain. In fact, any other rule would be repugnant to the spirit of the law or justice.

In any judicial or semi-judicial sale, the surplus always goes to the debtor, and had this property been sold on a mortgage or execution, there would have been no question about where the
41 surplus would have gone, and there isn't any here. See Burrill on Assignments, Pages 3, 9 & 10.

All the debts of Crippen, Lawrence & Company are presumed to have been paid, and it is my understanding that they were actually paid, but if they were not, the mere lapse of time itself, would have barred any of them, so far as this land is concerned, but if they had owed millions of dollars it would not have affected the title to this

land unless there had been some lien on it. The mere fact that a man is in debt does not create any lien on his real estate. In order to have created any lien against this property when the receiver was discharged, nineteen (19) years ago, there would have had to have been a judgment recorded in Butler County, Kansas, and kept alive. Stanhart executed this deed in 1894, twenty-four (24) years ago, and the Crippen-Lawrence Company had made the assignment a year previous, twenty-five (25) years ago. The receiver was discharged nineteen (19) years ago and the estate settled.

(Balance of this letter identical with last two paragraphs in "Letter" Exhibit No. 17.)

EXHIBIT 17.

(Copy.)

Holmes, Yankey & Holmes, Attorneys,
First National Bank Building,
Wichita, Kansas.

GENTLEMEN:

Yesterday afternoon I wrote you a lead pencil letter, and told you in that letter that I would write you again today.

I feel that by this time you have gone into the matter some, yourself, and discovered that there is absolutely no question about the fact that the reversionary interests, if any there be, in this matter, would be in the hands of the assignor. That is the universal rule, so far as I have been able to ascertain. In fact, any other rule would be repugnant to the spirit of the law or justice.

In any judicial or semi-judicial sale, the surplus always goes to the debtor, and had this property been sold on a mortgage or execution, there would have been no question about where the surplus would hav- gone, and there isn't any here. See Burrill on Assignments, Pages 3, 9 & 10.

All the debts of Crippen, Lawrence & Company are presumed to have been paid, and it is my understanding that they were actually paid, but if they were not, the mere lapse of time itself, would have barred any of them, so far as this land is concerned, but if they had owed millions of dollars it would not have affected the
42 title to this land unless there had been some lien on it. The mere fact that a man is in debt does not create any lien on his real estate. In order to have created any lien against this property when the receiver was discharged, nineteen (19) years ago, there would have had to have been a judgment, recorded in Butler County, Kansas, and kept alive. Stanhart executed this deed in 1894, twenty-four (24) years ago, and the Crippen-Lawrence Company had made the assignment a year previous, twenty-five (25) years ago. The receiver was discharged nineteen (19) years ago and the estate settled.

In re Potter, 54 Pa. St., at Page 465, the Court says that an assignment for the benefit of the creditors always leaves the resulting

trusts for the benefit of the assignor, which, if his debts have been actually paid or a legal presumption of payment has arisen from a lapse of time, entitles such assignor to the possession of the assigned property. In this case, the mere discharge of the assignee would turn any surplus back to the assignor, but if the assignee had never been discharged, but made the final settlement, as he did in this instance, lapse of time, itself, cured it.

I feel confident, without going any more extensively into this matter, that after having looked that matter up, that you can only come to one conclusion about it, and while the books are full of the law as to reversion, I feel it unnecessary to cite it. In the event, however, you find anything more that is needed, in reference to this title, I would be glad if you would notify me, and oblige,

Yours truly,

EXHIBIT 18.

R. L. Holmes. Chas. G. Yankey. W. E. Holmes.

Law Offices of

Holmes, Yankey and Holmes,

Suite 506 Fourth Natl. Bank Bldg.,

Wichita, Kans.

July 6, 1918.

Mr. J. H. Keith, Attorney,
Coffeyville, Kansas.

DEAR SIR:

We are writing you with reference to the title to the Nuttle property and in answer to your letters of July 1st and 2nd.

You have left with us the abstract and also certain quit
43 claim deeds from the heirs of the partners consisting of Crippen, Lawrence & Co. We have not checked over the heirs of the various partners of Crippen, Lawrence & Co., to ascertain whether or not the entire title of these partners is obtained in the various quit claim deeds which you have submitted. We have not done this for the reason that we have considered that the legal question involved in the matter was of more importance, and we wanted to get word to you as to our views of this matter and intend to follow this with a complete investigation of the corrections in the abstracts and title which you have submitted to us. We assume this to be satisfactory to you for there would be no delay on that account if the procedure adopted to correct the error in the title arising from the deed made by the assignee of Crippen, Lawrence & Co., is sufficient. Therefore, in this letter we intend to restrict ourselves entirely to the matter of remedying this one defect in the title.

We have carefully gone over the suggestions which you made in your letters and have also had in mind the suggestions which you

made while here in Wichita. At the very outset we wish to call attention to the fact that no copy of the general deed of assignment for the benefit of creditors has been submitted with this title. The references to this conveyance refer to the same as an assignment for the benefit of creditors, and from this and from the copies of part of the proceedings in the District Court of Arapahoe County, Colorado, we must assume that the assignment is a general assignment for the benefit of creditors and is in its general aspects such as is provided for under the laws of Kansas.

In your various letters you have suggested the possibility of a reversion to Crippen, Lawrence & Co., by virtue of the fact that the assignee was discharged. The certified copies which you have presented for our consideration do not show that the entire debts of Crippen, Lawrence & Co., were paid. In fact the opposite inference must be made from such copies of the files of the creditors' proceedings. The question involved in this matter is one not entirely free from doubt. However, our conclusion is that the debtor making the assignment for the benefit of creditors in the absence of full payment of all debts of the debtor, that there would be no reversion to the debtor of property conveyed to the assignee but which he failed to properly administer. It seems to us that in the instance in question as the deed of the assignee under the holdings of our Supreme Court was incapable of transfer-ing title that the title attempted to be conveyed would remain in the estate for the benefit of the creditors, that even in the absence of an assignee that this title would still remain in the creditors.

The basis for our contention in this matter is supported by the text which we quote from 5 Corpus Juris, page 1038, as follows:

"The purpose of a mortgage or deed of trust is to secure a particular debt; the purpose of an assignment is to pay all the debts of the grantor. In the former, only a defeasible title passes, and the property reverts to the grantor on the happening of certain stipulated conditions; in the latter, the entire indefeasible title goes out of the grantor, and the property is vested absolutely in the assignee. In the one class, equi-ably considered, a lien is created on the property in favor of the creditor intended to be secured, and the property itself is still regarded as the grantor's; in the other, there is an absolute appropriation of the property to the creditors, and both the legal and equitable title is passed beyond the control of the assignee."

The above text is supported by an abundance of authorities as you will find upon examination of the original article.

In this same text at page 1305 there is an article under reversion of property upon termination of trust. However, this article makes no statement that there is such a reversion where the debts have not been paid in full, and our further investigation does not disclose that there is such a reversion.

The deed of assignment in this case might raise some question as to whether or not it should be construed as a deed of trust in the

nature of a mortgage, in other words, that the interests of the credi
ors would be that only of a mortgagee. If this were true it woul
make no difference in the title for the reason that their claims an
lien against this property would still continue. You have suggeste
that these claims might be barred by laches or limitations, an
though this might be true still there could be situations which woul
not bar these claims, and as the claims in this estate seemed to hav
amounted to considerable amounts it would be a very hazardou
proposition to depend upon laches or limitations to make the titl
to this property. If we knew the exact amount of the claims an
it was some reasonably small amount some provision might be mad
for protecting against these claims, but in view of the possible mag
nitude of the claims and the uncertainty of the amounts we kno
of no way that this could be provided against.

There are other reasons in connection with this which sugges
themselves as reasons why the procedure which you had adopte
to correct this title is not sufficient, but the ones which we hav
outlined are the principal obstacles in correcting the title.

We have given this matter considerable attention as we desire
to accept the title if it could have been made good. We are unabl
today, account of lack of time, as we desire to get this letter to yo
as soon as possible, to examine the other features of the title
45 However, we will write you in regard to that Monday.

Yours very truly,

HOLMES, YANKEY & HOLMES.

C. G Y.-L. H.

EXHIBIT 19.

R. L. Holmes. Chas. G. Yankey. W. E. Holmes

Law Offices of

Holmes, Yankey and Holmes,

Suite 506 Fourth Natl. Bank Bldg.,

Wichita, Kansas.

July 8, 1918.

Mr. J. H. Keith, Attorney,
Coffeyville, Kansas.

DEAR SIR:

We wrote you last Saturday in regard to the title to the Nuttl
property upon which you and your associates hold an oil and ga
lease and in regard to which the contract has been made to Liberty
Oil Co. At that time we wrote you that we would advise you toda
further in regard to the title.

In our last letter we stated that upon investigation we were unabl
to accept the title as you presented it on account of failure of titl
due to the making of an unauthorized deed by the assignee of Crip

pen, Lawrence & Company. In attempting to remedy this defect you have obtained and presented to us for our consideration quit claim deeds from H. J. Putman and the heirs of H. J. Crippen, to-wit: Mrs. Lelia J. Layng and her husband and Marie A. Stanley and husband. According to the affidavits presented these purport to be the owners of all of the title of Crippen, Lawrence & Company except the title of J. J. Crippen, and as to him, now deceased, no quit claim deeds are presented, it being your idea, as we understand it, that a warranty deed was made by J. J. Crippen which would pass his purported interest in this property.

As stated in our previous letter, it is our contention that these deeds do not correct the title with respect to the defective conveyance made by the assignee of Crippen, Lawrence & Company.

Mr. Burdette of the Liberty Oil Company is just at present out of the city, he not having returned from a trip to the East, and just as soon as he returns, which we expect to be in the next day or two, we will take up with him the matter of our opinion on this
46 title. However, you will understand that in the condition the title is now in as you presented it to us we are unable to hold this title to be a good and merchantable title, or such title as it contemplated in the contract for the sale of this lease.

As there are a number of different persons interested in this matter we are notifying them all as to our conclusions in regard to this title. We have been assuming that you represented them, but preferring to relieve ourselves of any responsibility on this matter we are notifying each of them as to the condition of this title. If you have any further suggestions to make in this matter we would be pleased to hear from you.

Yours very truly,

HOLMES, YANKEY & HOLMES.

C. G. Y.: L. H.

EXHIBIT 20.

July 9, 1918.

Holmes, Yankey & Holmes,
Wichita, Kansas.

GENTLEMEN:

Your two letters, relative to the title of the Northwest Quarter (N. W. ¼) of 31-26-5, known as the Nuttle lease, in Butler County, Kansas, at hand, and in reply will say that heretofore we had not treated the indebtedness of Crippen, Lawrence & Co., as of any importance, and in as much as you never indicated until the last two letters that you felt that it had any bearing on the matter, we made no effort to get that end of the matter investivated.

However, in as much as you feel that this is a matter of some importance, we have taken steps to make an investigation, and will notify you of the results within a short time.

We took the matter up with Denver a few days ago, but it always a little slow in getting anything from there.

Trusting that you will notify me when Mr. Burdette returns, I am

Yours truly,

J. H. K.-M. A. C.

EXHIBIT 21.

(Copy.)

Keith & Keith.

47 Coffeyville, Kansas, 7-11-18.

DEA- MR. YANKEY:

Court convened today at Nowata and we had some matters to attend to there and I have been unable to give the matter about which we talked any attention but will try to do so tomorrow and will write you. However, there seems to be no question but if for any reason the title did not pass in the Stuart and it would be in the assignor

No one else could have it. The assignee was discharged many years ag- and all his title and rights were terminated when he was discharged. The creditors if there were any unsatisfied ones had already received the benefit derived from the sale of this property and could not take any advantage of a defective conveyance—1 Cyc-239.

However, all claims that any creditor ever had that could in any way effected the title to this property even though it had never been conveyed are barred and are presumed to have been paid.

On reversion see—

In Re Patter 54 Past-465.
Century 2nd Am. Digest Vol. 4-2422.
Van Hook vs. Walton 28 Tex. 59.
Hays vs. Hostetter 25 NE Rept. 134.
Burreill Assignments 228.
5 Corpus Juris 1305.

I will endeavor to run this down more extensively tomorrow. Am doing this after hours and have no stenographer here.

Yours,

J. H. KEITH.

EXHIBIT 22.

R. L. Holmes. Chas. G. Yankey. W. E. Holmes.

Law Offices of

Holmes, Yankey and Holmes,

Suite 506 Fourth Natl. Bank Bldg.

Wichita, Kans.

July 11, 1918.

Mr. J. H. Keith, Attorney,
Coffeyville, Kans.

DEAR SIR:

48 We received your letter of the 9th inst. and in reply wish to advise you of the following matters.

We have today sent a letter to the Condon National Bank at the direction of the Liberty Oil Company, a copy of which we enclose.

You will note from this letter that the Liberty Oil Co. cannot accept the title which you and your associates have submitted under the contract for the purchase of the Nuttle leases. We have previously written you as to these objections to the title and in our opinion the defects are such as cannot be remedied and have not been remedied by the data and information which you have gathered in connection with this title. The contract provided for thirty days within which to complete this title. This time has long since expired, but our attitude has been to give every assistance we could to correct the title. The Liberty Oil Company declines to accept the title which you submitted, and as the time has expired within which the corrections were to be made it requests you to notify the Condon National Bank to release to the Liberty Oil Company the $100,000.00 now on deposit under this contract.

We regret very much that this title is not marketable but we have reached this conclusion after a very careful consideration of the matters involved, and believe that it will be a very difficult matter to get this title straightened out so that it would be a good marketable title.

Yours very -ruly,

HOLMES, YANKEY & HOLMES.

CGY:LH.

EXHIBIT 23.

R. L. Holmes. Chas. G. Yankey. W. E. Holmes.

Holmes, Yankey and Holmes,
Suite 506 Fourth Natl. Bank Bldg.,
Wichita, Kans.

July Fifteenth, 1918.

Mr. J. H. Keith,
Coffeyville, Kansas.

DEAR SIR:

We are today sending you by express, prepaid, the abstract of title on the Nuttle property in Butler County, Kansas, which you submitted to us, and also the following papers:

49 1. Certificate of Clerk as to minor creditors of Crippin, Lawrence & Co.

2. Copy of petition and order of sale for sale of property.

3. Final report of Joseph J. Crippen.

4. Certificate as to discharge of assignee.

5. Order of court discharging assignee.

6. Order of court with respect to turning over part of assets to Crippen, Trustee.

7. Order of court approving report of Trustee.

8. Quit claim deed from Harry L. Stanley and Marie A. Stanley, his wife to C. R. Nuttle.

9. Quit claim deed from Edward G. Layng and Leila J. Layng, his wife, to C. R. Nuttle.

10. Quit claim deed from H. J. Putnam and Lillian S. Putnam, his wife, to C. R. Nuttle.

11. Quit claim deed from J. E. Putnam and Emily M. Putnam, his wife, to C. R. Nuttle.

12. Affidavits of H. J. Putnam and Peter Sanborn as to the members of the partnership of Crippen, Lawrence & Co.

13. Certificates of Probate Court of Merrimack County as to the heirs of Henry J. Crippen.

14. Affidavit of J. E. Putnam.

We are intending to return to you all original papers which you sent us in connection with this title, and so far as we know the

papers we are sending you today are all that we have in our possession. Please acknowledge receipt of these papers and oblige.

Yours truly,

HOLMES, YANKEY AND HOLMES.

CGY-W.

By Mr. Yankey: We now offer Exhibits 24, 25, 26, 27, certified copies of the deeds which appear on the abstract and which relate to the question involved in this matter.

By the Court: Very well.

By Mr. Yankey: Exhibits 28 to 31, inclusive, a part of the correspondence between the parties, the identification of which is waived, are now offered in evidence.

50 We offer in evidence Exhibit No. 32, the identification of which is waived, purports to be the general assignment made by Crippen, Lawrence & Company to Stephen H. Standart, and is recorded Sept. 18, 1893, in Arapahoe County, Colo.

(Exhibits Nos. 24 to 32, inclusive, above referred to, offered and received in evidence, are as follows:)

EXHIBIT 24.

STATE OF KANSAS,
Butler County, ss:

I, Alice Friend, Register of Deeds in and for the County and State aforesaid, do hereby certify that the within instrument is a true and correct copy of a certain Special Warranty Deed filed in this office on the 17th day of July, A. D., 1896, at 3 o'clock P. M., and recorded in Book 75 of Deeds at page 318.

Witness my hand and official seal this 26th day of April, 1919.

ALICE FRIEND, [SEAL.]
Register of Deeds.

Special Warranty Deed.

This indenture made the eleventh day of July in the year of Our Lord One Thousand Eight Hundred and Ninety Six, between Benjamin Jenkins and Margret E. Jenkins his wife of Salina, in the County of Saline and State of Kansas, parties of the first part, and J. J. Crippen, Trustee, of Denver, in the County of Arapahoe and State of Colorado, party of the second part,

Witnesseth, That said parties of the first part, in consideration of the sum of Eighty ($80.00) Dollars to them duly paid the receipts of which is hereby acknowledged have sold, and by these presents do grant, bargain, sell and convey to the said party of the second part, his heirs, successors and assigns, all that tract or parcel of land situated in the County of Butler and State of Kansas, and described as follows to-wit:

The East One half of the Northwest Quarter and Lots One (1) and Two (2), of Section Thirty-one (31) in Township Twenty-six (26), south of Range Five (5), East of 6 degrees P. M. and containing one hundred sixty (160) acres more or less.

With the appurtenances and all the estate, title and interest of the said Parties of the first part therein, and the said Benjamin Jenkins and Margret E. Jenkins do hereby covenant and agree that they will warrant and defend the said premises in the quiet and peaceable possession of said party of the second part his heirs
51 and assigns forever against all persons lawfully claiming or to claim the same by, from, or under them or any of their heirs, or assigns. Except mortgage to Crippen, Lawrence & Co. of $1,200. Interest and taxes.

In Witness Whereof the said premises of the first part have hereunto set their hands and seals the day and year first above written.

BENJAMIN JENKINS. [SEAL.]
MARGARET E. JENKINS. [SEAL.]

STATE OF KANSAS,
Saline County, ss:

Be it remembered, That on this 13th day of July, 1896, before me a Notary Public within and for said County and State personally came Benjamin Jenkins and Margaret E. Jenkins his wife who are to me personally known to be the same persons representing to be and who executed the foregoing Instrument and duly acknowledged the execution of the same.

In witness whereof, I have hereunto subscribed my name and affixed my official seal on the day and year last above written.

[SEAL.] CHARLES J. PECK,
Notary Public.

My commission expires Jan. 30, 1897.

STATE OF KANSAS,
Butler County, ss:

This instrument was filed for record on the 17th day of July A. D. 1896, at 3 o'clock P. M. and duly recorded in Vol. 75 of Deeds at page 318.

S. H. BRANDON,
Register of Deeds.
By CHAS. G. RIGBY,
Deputy.

EXHIBIT 25.

STATE OF KANSAS,
Butler County, ss:

I, Alice Friend, Register of Deeds in — for the County and State aforesaid, do hereby certify that the within instrument is a true and correct copy of a certain Trustee's Deed filed in this office on the 30th

day of September, A. D. 1893, at 3¼ o'clock P. M., and recorded in Book 74 of Deeds, at page 285.

Witness my hand and official seal this 26th day of April, 1919.

ALICE FRIEND, [SEAL.]
Register of Deeds.

52 *Trustee's Deed.*

Whereas, Crippen, Lawrence & Co., a copartnership consisting of Joseph J. Crippen, Henry J. Crippen, and Henry J. Putnam, have made a deed of assignment of all their property, real and personal, to Stephen H. Standart, as assignee of Denver, Colorado, for the benefit of their creditors, said deed being dated September 18, 1893, and filed for record on the same day in the office of the Clerk and Recorder of Arapahoe County, in the State of Colorado, and

Whereas, The legal title to the following lands and tenements situated in Butler in the State of Kansas, appears of the record in J. E. Putnam who nevertheless holds said title in trust for the said Crippen, Lawrence & Company, and Whereas, the said Crippen, Lawrence & Company have requested the said J. E. Putnam to convey the legal title to said lands and tenements to the said Stephen H. Standart, as assignee, as aforesaid.

Now, therefore, This indenture made this twenty-first day of September, 1893, between the said J. E. Putnam of Salina, Kans., of the first part and the said Stephen H. Standart as assignee of the second part,

Witnesseth: That the said party of the first part for and in consideration of the sum of One Dollar to him in hand paid, the receipt of which is hereby acknowledged, and pursuant to the request as aforesaid of the said Crippen, Lawrence & Company, has sold and by these presents does grant, bargain, sell and convey to the said party of the second part, his successors and assigns, all these tracts and parcels of land situated in the County of Butler and State of Kansas, that is to say:

The East Half of the Southeast Quarter of Section Number Twenty-two (22), in Township Number Twenty-eight (28), Range Number three (3), and the East Half of the Northwest Quarter and Lots Numbered One (1), and Two (2), of Section Number Thirty-one (31), Township Number Twenty-six (26), Range Number Five (5), East of the Sixth P. M., with the appurtenances and all the title and interest of the said party of the first part therein, subject, however, to such incumbrances as appear of record on said tracts and parcels of land respectively.

In witness whereof, The said party of the first part has hereunto set his hand the day and year above written.

J. E. PUTNAM.

STATE OF KANSAS,
Saline County, ss:

53 Be it remembered, That on this Twenty-first day of September, 1893, before me a Notary Public, within and for said County and State, personally came J. E. Putnam who is to

me personally known to be the same person he represents himself to be, and who executed the foregoing instrument and duly acknowledged the execution of the same.

In witness whereof, I have hereunto subscribed my name and affixed my official seal, on the day and year last above written.

[SEAL.] C. L. WRIGHT,
Notary Public.

My Commission expires Feb'y 9th, 1895.

STATE OF KANSAS,
Butler County, ss:

This instrument was filed for record on the 30th day of September, A. D. 1893, at 3¼ o'clock P. M., and duly recorded in Vol. 74 of Deeds at page 285.

M. A. PALMER,
Register of Deeds,
By S. M. P.

EXHIBIT 26.

STATE OF KANSAS,
Butler County, ss:

I, Alice Friend, Register of Deeds in and for the County and State aforesaid, do hereby certify that the within instrument is a true and correct copy of a certain Warranty Deed filed in this office on the 25th day of September A. D. 1894, at 5 o'clock P. M., and recorded in Book 70 of Deeds at page 520.

Witness my hand and official seal this 26th day of April, 1919.

ALICE FRIEND, [SEAL.]
Register of Deeds.

Special Warranty Deed.

This indenture, Made this thirty-first day of August, in the year of our Lord One Thousand Eight Hundred and Ninety-four between S. H. Standart Assignee of Denver in the County of Aarapahoe, and State of Colorado, party of the first part, and Benjamin Jenkins of Salina in the County of Saline and State of Kansas, party of the second part,

Witnesseth: That the said party of the first part, in consideration of the sum of Thirteen Hundred and Twenty-five Dollars, to him duly paid, the receipt of which is hereby acknowledged, has sold, and by these presents, does grant and convey to the said party of the second part, his heirs and assigns, all that tract or parcel of
54 land situate in the County of Butler and State of Kansas and described as follows, to-wit:

The East Half of the North West Quarter and Lots One (1) and Two (2) of Section Thirty-one (31) in Township Twenty-six (26) South of Range Five (5), East of Sixth P. M., and containing One

Hundred and Sixty (160) acres more or less. Subject to a mortgage of $1,200.00 with interest from this date which second party assumes at Six per cent interest, with the appurtenances and all the estate, title and interest of the said party of the first part therein. And the said S. H. Standart assignee *do* hereby covenant and agree that he will Warrant and Defend the said premises in the quiet and peaceable possession of said party of the second part, his heirs and assigns, forever, against all persons lawfully claiming or to claim the same by, from or under him or any of his assigns. Except as above and Subject to Lease now on land to E. L. Miller expiring Feby. 28th, '95.

In witness whereof, The said party of the first part has hereunto set his hand and seal the day and year first above written.

Signed, sealed and delivered in presence of

S. H. STANDART, [SEAL.]
Assignee.

STATE OF COLORADO,
Arapahoe County, ss:

Be it remembered, That on this Sixth day of September 1894 before me, a Notary Public, within and for said County and State, personally came S. H. Standart Assignee who is to me personally known to be the same person he represents himself to be, who executed foregoing instrument, and duly acknowledged the execution of the same.

In witness whereof, I have hereunto subscribed my name and affixed my official seal on the day and year last above written.

[SEAL.] JAMES R. HICKS,
Notary Public.

My commission expires March 5th, 1898.

STATE OF KANSAS,
Butler County, ss:

This instrument was filed for record on the 25th day of September A. D. 1894 at 5 o'clock P. M. and duly recorded in Vol. 70 of Deeds at page 520.

S. H. BRANDON,
Register of Deeds,
By CHAS. G. RIGBY,
Deputy.

55

EXHIBIT 27.

STATE OF KANSAS,
Butler County, ss:

I, Alice Friend, Register of Deeds in and for the County and State aforesaid, do hereby certify that the within instrument is a true and correct copy of a certain Warranty Deed filed in this office on the 15th day of September, A. D. 1902, at 7 o'clock P. M. and recorded in Book 99 of Deeds at page 140.

Witness my hand and official seal this 26th day of April, 1919.

ALICE FRIEND, [SEAL.]
Register of Deeds.

Warranty Deed.

This indenture, Made this 19th day of February, in the year
Our Lord One Thousand Nine Hundred and Two, between J.
Crippen, Trustee, and J. J. Crippin and H. F. Crippen his wife
Denver in the County of Arapahoe and State of Colorado of the fi
part, and H. M. McConnell of the second part. Witnesseth, T
the said parties of the first part, in consideration of the sum of O
and other valuable considerations Dollars to them duly paid,
receipt of which is hereby acknowledged, have sold, and by th
presents do grant, and Convey to the said party of the second par
heirs and assigns, all that tract or parcel of land situated in
County of Butler and State of Kansas, described as follows, to-w

The East Half of the North West Quarter and Lots One (1) a
Two (2) of Section Thirty-one (31) in Township Twenty six (2
south of Range Five (5) East of Sixth P. M. with the appurtenan
and all the estate, title and interest of the said part- of the first p
therein. And the said parties of the first part do hereby coven
and agree that at the delivery hereof they are the lawful owner
the premises above granted and seized of a good and indefeasi
estate of inheritance therein, free and clear of all incumbrances
that they will Warrant and Defend the same in the quiet and pe
able possession of the said party of the second part, his heirs
assigns, forever, against all persons lawfully claiming the same.

In witness whereof, the said party of the first part has hereu
set his hand and seal the day and year last above written.

J. J. CRIPPEN, [SEAL.
Trustee.

Signed, Sealed and Delivered in the presence of
J. J. CRIPPEN, [SEAL.]
H. F. CRIPPEN. [SEAL.]

56 STATE OF COLORADO,
County of Arapahoe, ss:

Be it remembered, That on this 3rd day of April, A. D. 1
before me, John C. Feldwisch, a Notary Public in and for said Cou
and State, came J. J. Crippen, Trustee and J. J. Crippen and H
Crippen his wife to me personally known to be the same person
executed the foregoing instrument and duly acknowledged the
ecution of the same.

In witness whereof, I have hereunto subscribed my name
fixed my official seal, on the day and year last above written.

[SEAL.] JOHN C. FELDWISCH,
Notary Publi

My commission expires November —, 1903.

COPY BOUND

STATE OF KANSAS,
Butler County, ss:

This instrument was filed for record on the 15th day of September A. D. 1902 at 7 o'clock A. M. and duly recorded in Vol. 99 of Deeds at page 140.

F. S. ALLEN,
Register of Deeds.

EXHIBIT 28.

No. 6797.

Chas. M. Ball, Prest. C. T. Carpenter, Vice Prest.
Wm. H. Tester, Cashier. F. S. Mitchell, Vice Prest.

The Condon National Bank.

Capital, $100,000.00.

Coffeyville, Kansas, July 8th, 1918.

Holmes, Yankey & Holmes,
Wichita, Kansas.

GENTLEMEN:

We acknowledge receipt of yours of the 6th, with inclosure as stated.

Yours truly,

CHAS. M. BALL,
Prest.

57 EXHIBIT 29.

July 6, 1918.

Condon National Bank,
Coffeyville, Kansas.

GENTLEMEN:

In regard to the title *to* the property covered by oil and gas leases which Atlas Petroleum Co., J. H. Keith, C. M. Ball, Isadore Liteman and P. G. Keith propose to sell to the Liberty Oil Company and in regard to which you hold contract dated 24th day of May 1918. We wish to advise that we have this day sent to J. H. Keith, who has been acting as agent for these various parties, a letter, copy of which we are enclosing.

You will note from this letter that the title as offered is not such title as the contract called for. This title was to be completed within thirty days from the time that objections were made to the title.

Mr. Burdette of the Liberty Oil Company is in the East at this time and is expected back shortly. As soon as he returns we will advise you further in this matter.

CLOSE IN CENTER

We would appreciate it very much if you would acknowledge receipt of this letter.

Yours very truly,

C. G. Y.: L. H.
Enc.

EXHIBIT 30.

No. 6797.

Chas. M. Ball, Prest. C. T. Carpenter, Vice Prest.
Wm. H. Tester, Cashier. F. S. Mitchell, Vice Prest.

The Condon National Bank.

Capital, $100,000.00.

Coffeyville, Kansas, July 13th, 1918.

Messrs. Holmes, Yankey and Holmes,
Attorneys for Liberty Oil Co.,
Wichita, Kansas.

GENTLEMEN:

Replying to yours of the 12th, regarding the escrow money we are holding.

We note your demand that this money be returned to Liberty Oil Co. and claiming that sellers have not offered you merchantable title.

58 We are in receipt of a written demand from the sellers referred to that we turn this money to them upon the ground that they have tendered to you a merchantable title and that you have not complied with the contract.

We will, therefore be compelled to hold this money until the matter is adjudicated.

Very truly,

F. S. MITCHELL,
Vice President.

EXHIBIT 31.

J. H. Keith. W. S. Keith.

Law Office of
Keith & Keith.
Coffeyville, Kansas.

May 31, 1918.

Mr. Edward Burdett,
Wichita, Kansas.

DEAR SIR:

The thought occurred to me since having talked with you over the telephone that in event we are unable to trace down Crippen

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the Crippen, Lawrence and Company, that we might be able to get the information which we desire from the persons to whom this land was conveyed and I wish you would look up the abstract and get for me the name and address of the persons to whom Crippen conveyed the land, and also the person to whom that was conveyed. These people might furnish us the information.

Hoping that you have taken up the matter about which we talked, with Mr. Dana, and that you will hear from him soon. I sent him a wire this afternoon explaining everything as fully as I could and have also written him a letter, but this letter will not be received in time to do anything this week. I also hoped that we might get this abstract arranged so that we might close this up the first of the coming week as I am over due in Kentucky but of course will stay here as long as necessary to fix things up.

Yours truly,

J. H. KEITH.

R. G.-J. H. K.

59 EXHIBIT 32.

Assignment.

Crippen Lawrence & Co.

to

Stephen H. Standart.

Filed for Record at 2:40 o'clock P. M. Sept. 18, 1893.

A. B. McGAFFEY,
Recorder.

Examined.

This Indenture made this 18th day of September A. D. 1893 between Joseph J. Crippen, Henry J. Crippen and Henry J. Putnam, as copartners, under the firm name and style of Crippen, Lawrence & Co. said copartnership having its domicile and principal business office in the City of Denver, County of Arapahoe and State of Colorado, of the first part, and Stephen H. Standart, of the same place, of the second part:

Whereas, The said firm and co-partnership of Crippen Lawrence & Co. comprising the persons aforementioned, owing to sundry losses and business misfortunes, and the depreciation in value of the property and assets thereof, and the inability thereof to so speedily realize upon the said property and assets as to meet the same with punctuality and in full, the said firm is at present unable to discharge its just debts and obligations; and the said copartnership being justly indebted in sundray considerable sums of money; and the said copartners, Joseph J. Crippen, Henry J. Crippen and Henry J. Putnam, being now desirous of making a fair and equitable distribution of all the property and effects of said copartnership among all of the creditors thereof; and being willing to assign all of the

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property of said copartnership, real, personal and mixed, for the benefit of all the creditors of the said copartnership without preference, in proportion to their respective claims.

Now, Therefore, This Indenture witnesseth, that the said Joseph Crippen, Henry J. Crippen and Henry J. Putnam, parties of the first part, in consideration of the premises, and of the sum of one dollar to them in hand paid by the said Stephen H. Standart, party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, sold, released, assigned, conveyed, transferred and set over, and by these presents do grant, bargain, and sell, release, assign, convey, transfer and set over unto the said Stephen H. Standart, party of the second part, and to his heirs, executors, administrators, and assigns forever, all and singular the lands, tenements, herditaments, and all the goods, chattels, merchandise, bills,
stocks, bonds, notes, book accounts, claims, demands, choses
60 in action, judgments, evidences of debt, real estate and interest in real estate and property of every name and nature whatsoever, of the said co-partnership, whether held in the said co-partnership name, or in the name or names of either or any one, or more of the said parties of the first part, or in the name or names of any other person or persons, partnership or corporation, and wheresoever the same may be situate or be found, whether within or without the State of Colorado, including all lands and real estate and interests (in lands and real estate) of the said copartnership, in the and in each and every one of the counties of Allen, Anderson, Butler, Chautauqua, Clay, Clark, Cloud, Coffey, Comanche, Decatur, Dickinson, Edwards, Elk, Ellsworth, Greenwood, Hodgeman, Jewell, Kingman, Kiowa, Lincoln, Lyon, Marion, Montgomery, Morris, McPherson, Neosho, Norton, Osage, Ottawa, Pawnee, Phillips, Rice, Rush, Saline, Smith, Washington, Wabaunsee, Wilson, and Woodson, in the State of Kansas, and wheresoever else lands, real estate or interests in lands and real estate of the said copartnership, may be situate within the said State of Kansas, it being in no sense the purpose of the said parties of the first part in making special reference to said property in the State of Kansas, to limit this assignment, which is intended to be an assignment of all of the estate of the said copartnership of Crippen, Lawrence & Co., real, personal and mixed, and wheresoever the same may be situate or be found, for the benefit of all the creditors thereof.

To have and to hold the same, to the said Stephen H. Standart, his heirs, executors, administrators and assigns forever.

In Trust nevertheless, to and for the following uses, intents and purposes, that is to say, that the said party of the second part shall forthwith take possession of all and singular the lands, tenements, hereditaments, property and effects hereby assigned; and sell and dispose of the same for the best prices which he shall be able to obtain, and to convert the same into money, and shall also collect all and singular the said debts, stocks, bonds, notes, accounts, claims, demands and choses in action, or so much thereof as may prove collectible, and thereupon execute, acknowledge and deliver all necessary conveyances and instruments for the purposes aforesaid;

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d by and with the proceeds of such sales and collections, the said rty of the second part shall first pay and disburse all the lawful penses, costs, charges and commissions of executing and carrying to effect this assignment, including a reasonable charge, and com- nsation for his personal services and attention to the execution ereof, which shall in no event exceed the sum of Five hundred llars ($500.00) per month for such time as he shall be personally gaged in the execution thereof; to which limitation the said party the second part, by accepting the trust hereby reposed in him, expressly accedes and agrees; and by and with the residue or net proceeds and avails of such sales and collections, the said party of the second part shall pay and discharge all the partnership debts, demands and liabilities whatsoever, now existing, hether due, or hereafter to become due, provided such remainder all be sufficient for that purpose; and if not sufficient, then the me shall be applied pro rata to the payment of said debts, de- ands and liabilities, according to their respective amounts, without eference, except such as are allowed by law.

Should any part or portion of the said assigned copartnership operty, or of the proceeds or avails thereof remain, after fully mplying with the trust aforesaid, then the said party of the cond part shall deal with and administer the same with due re- rd to the rights of the private creditors of the said Joseph J. Crip- n, Henry J. Crippen and Henry J. Putnam respectively, without eference as to any thereof, subject only to exemptions and prefer- ces provided by law.

And for the better execution of these presents and of the several sts hereby reposed, the said parties of the first part, and each them respectively, do hereby make, constitute and appoint the id Stephen H. Standart, party of the second part, the true and wful attorney, irrevocable of them and each of them, with full wer and authority to do, transact and perform all acts, deeds, atters and things which can or may be necessary in the premises, fully and completely as the said parties of the first part or either them, might or could do, were these presents not executed, hereby tifying and confirming all and everything that our said attorney all do or cause to be done in the premises.

In Testimony whereof, the said parties of the first part, the said seph J. Crippen, and Henry J. Putnam for themselves, and the id Henry J. Crippen by the said Joseph J. Crippen as his attorney fact, have hereunto set their hands and seals, the day and year st above written.

JOSEPH J. CRIPPEN. [Printed Seal.]
HENRY J. PUTNAM. [Printed Seal.]
HENRY J. CRIPPEN, [Printed Seal.]
By JOSEPH J. CRIPPEN,
As his Attorney in Fact.

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STATE OF COLORADO,
Arapahoe County, ss:

On this 18th day of September, A. D. 1893 personally appeared before me Edward L. Shannon a Notary Public within and for said County and State, Joseph J. Crippen and Henry J. Putnam, each of whom are to me personally known to be the same persons who are described in and who executed the annexed and foregoing
62 deed of assignment, each for and in his own behalf, and the said Joseph J. Crippen as Attorney in fact for Henry J. Crippen and each for himself acknowledged that he executed the same as his free act and deed, and the said Joseph J. Crippen acknowledged the same to be the free act and deed of the said Henry J. Crippen and of himself as his attorney in fact for all and singular the uses and purposes therein set forth.

I further certify that my commission as a Notary Public expires on the 30th day of March A. D. 1897.

In Testimony whereof I have hereunto set my hand and affixed my Notarial Seal the day and year aforesaid.

[Notarial Seal.] EDWARD L. SHANNON,
Notary Public.

I, Stephen H. Standart, the person mentioned in the annexed and foregoing deed of Assignment as Assignee of Joseph J. Crippen, Henry J. Crippen and Henry J. Putnam as copartners under the firm name and style of Crippen, Lawrence & Co. do hereby accept the trust thereby conveyed to and reposed in me, and in so doing I assent and agree to the provision therein limiting compensation for my personal services and attention to the execution thereof.

Witness my hand and seal this 18th day of September A. D. 1893.

STEPHEN H. STANDART.

STATE OF COLORADO,
Arapahoe County, ss:

On this 18th day of September, A. D. 1893, personally appeared before me Edward L. Shannon a Notary Public within and for said County and State, Stephen H. Standart, who is to me personally known to be the same person described in, and who has subscribed his name to the foregoing acceptance in writing of the trust reposed in him by the annexed deed of Assignment, and acknowledged that he executed the same for the uses and purposes therein set forth.

I further certify that my commission as a Notary Public expires on the 30th day of March A. D. 1897.

In Testimony whereof, I have hereunto set my hand and affixed my Notarial Seal, the day and year aforesaid.

[Notarial Seal.] EDWARD L. SHANNON.

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STATE OF COLORADO,
City and County of Denver, ss:

I, Charles A. Lammers, Clerk and Recorder in and for said City and County, in the State aforesaid, do hereby certify. That I am the custodian of the records of the former County of Arapahoe,
63 in the State of Colorado, and that the above and foregoing is a true, correct and complete transcript and copy from the records of my office as the same appears in Book 947 at page 189.

Witness my hand and official seal this 29th day of April, 1919.

CHARLES A. LAMMERS,
[SEAL.] *Clerk and Recorder.*

Certificate.

STATE OF COLORADO,
City and County of Denver, ss:

I, W. A. Dollison, Clerk of the District Court of the Second Judicial District of the State of Colorado, the same being a court of Record, having common law jurisdiction, a seal and Clerk, hereby certify that Charles A. Lammers, whose name is signed to the foregoing certificate and attestation, was at the time of the signing and ensealing of the same, and is now Clerk and Custodian of the records of the former County of Arapahoe, in the State of Colorado; that I am well acquainted with the hand writing of said Clerk and know his signature to be genuine and that full faith and credit are due to all the official acts of the said Clerk and Custodian.

Witness my hand and seal this 2nd day of May, A. D. 1919.

[SEAL.] W. A. DOLLISON,
Clerk of the District Court of the Second Judicial District of the State of Colorado.

Double Certificate.

STATE OF COLORADO,
City and County of Denver, ss:

Certificate of Judge.

I, Henry J. Hersey, Presiding Judge of the District Court within and for the Second Judicial District of the State of Colorado (embracing the City and County of Denver), the same being a Court of Record, having common law jurisdiction, a Seal and a Clerk, hereby certify that W. A. Dollison, whose name is signed to the foregoing certificate and attestation, was at the time of the signing and ensealing of the same, and is now, Clerk of the District Court within and for the City and County of Denver, and State of Colorado, duly appointed and qualified as such and the keeper of the seal and the

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custodian of the Records of said Court; that I am well acquainted with the hand writing of the said Clerk, and know his signature and verily believe the signature to the said certificate and attestation to be the genuine signature of the said Clerk; that the Seal affixed to said certificate is the Seal of the said District Court, that
64 full faith and credit are due and of right ought to be given to all the official acts of the said Clerk in Courts of Record and elsewhere, and that the said certificate and attestation are in due form of law and by the proper officer.

Witness my hand and seal this 2nd day of May, A. D. 1919.

[SEAL.] HENRY J. HERSEY,
Presiding Judge of the District Court within and for the Second Judicial District of the State of Colorado.

STATE OF COLORADO,
City and County of Denver, ss:

Certificate of Clerk.

I, W. A. Dollison, Clerk of the District Court of the Second Judicial District of the State of Colorado (Embracing the City and County of Denver), the same being a Court of Record, hereby, certify that Hon. Henry J. Hersey, Presiding Judge, whose name is signed to the foregoing certificate and attestation, was at the time of the signing and ensealing of the same, and is now, presiding Judge of the District Court of the Second Judicial District of the State of Colorado, duly elected and qualified; that I am well acquainted with the handwriting of the said Judge, and know his signature and verily believe the signature to the foregoing certificate and attestation to be the genuine signature of the said Judge.

Witness my hand and official seal the 2nd day of May, A. D. 1919.

[SEAL.] W. A. DOLLISON,
Clerk of the District Court of the Second Judicial District of the State of Colorado.

By Mr. Yankey: Mr. Jones, so as not to incumber the record, will you admit the letter of July eleventh in which the notice was given the title was not satisfactory, as required by the contract, that that notice was sent to all the intervening defendants?

By Mr. Jones: It is agreed in open court, the letter of July eleventh of the plaintiff notifying the intervening defendants that the title was not accepted—it is admitted this letter was sent to all the intervening defendants and also the Condon National Bank.

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Thereupon E. M. BURDETT, called as a witness on behalf of the plaintiff, having been first duly sworn, testifies as follows:

Direct examination.

Questions by Mr. Hammond:

Q. Give me your full name?

65 A. E. M. Burdett.

Q. Where do you live?

A. My home is Charleston, West Virginia; my office in New York City.

Q. What is your connection with the plaintiff, the Liberty Oil Company?

A. I am the President.

Q. Mr. Burdett there has been offered in evidence a contract between the Liberty Oil Company, purporting to be signed by you as its President, The Atlas Petroleum Company, and a number of others, for the purchase of certain property in Butler County, Kansas; and there has also been offered in evidence a series of letters passing between the owners of the property and Messrs. Holmes, Yankey and Holmes, Attorneys of Wichita, Kansas, in regard to the title. Now will you tell his Honor just how it was that you got Messrs. Holmes, Yankey and Holmes to look after this title first?

A. Well, I came to Wichita, Kansas, about the time that Mr. Reese, the General Manager of our company had had up with some people a proposition of buying this property. And we conducted some negotiations with Mr. Keith, acting for himself and his associates, that resulted in this contract. The title had to be examined right away and I was unacquainted in Wichita so I went into the Fourth National Bank, which was one of the large banks of the city, and introduced myself to the officers—to Mr. McClain, the president, and asked him if he would recommend me a firm of attorneys to handle a matter of this sort and explained to him what it was, and how much involved, and what I wanted. He suggested the names of half a dozen firms, and I then asked him who represented the bank, and he said Holmes, Yankey and Holmes represented the bank. So, on the strength of that I asked him if he would introduce me to Holmes, Yankey and Holmes; he did so, and I, on behalf of the Liberty Oil Company, employed the firm of Holmes, Yankey and Holmes to pass on the abstract of title in this matter and to represent the Liberty Oil Company in this transaction.

Q. Now, then, what necessity was there, if any, if there was any necessity, for a certificate of counsel as to merchantability, or the correctness of the title, other than how that would affect your purchasing the property itself?

By Mr. Jones: That is objected to as wholly immaterial.

By the Court: It probably is; I am going to hear it; but the contract was to furnish you a good and marketable title; no matter what

66 the necessity for a different title from that, if they fulfilled the contract. But if these parties knew the business in which

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he was engaged, and knew what he was going to do with this property, if you show that, you will show what you want to show.

By Mr. Hammond: Preliminary to that, you would want to know if the defendants knew anything about why they required a certificate.

Q. Did you have a conversation at the time the contract was entered into with the defendants in regard to the certificate of title being necessary from counsel?

By the Court:

Q. Well, did you have a conversation about the nature of the business you were transacting, or the company was transacting, or did they know?

A. I can't testify that there was a conversation about the nature of our business other than the ordinary conversation that is engaged in in negotiations of that sort. They probably asked—well, I don't remember whether they went into that—and I don't recall whether I went into it at that time. There was some conversation about the ability of my company to finance the purchase that was contemplated by this contract.

By Mr. Hammond:

Q. That purchase price was a million one hundred and fifty thousand dollars, under the contract, and you say there was some conversation between you and the defendant in regard to the ability of your company to finance it, is that correct?

A. There was some conversation but I cannot remember just how far we went into that or to what extent we discussed it, but I remember mentioning to some or all of the defendants that were present at the time this contract was concluded, the name of the banking concern that had financed our company up to that time.

Q. What I want to know, and, as I understand Mr. Jones objects to it—what I want to know, is this: Why was it necessary to have a certificate of the correctness of the title, as to its merchantability and so forth, from counsel, other than merely to protect the Liberty Oil Company?

By Mr. Jones: That is objected to as incompetent, irrelevant and immaterial.

By the Court: Answer.

A. Well, for the reason that the property they were proposing to
purchase under this contract was—for our purposes had to be
67 used as a security for the financing of the purchase. In other
words, we would have to sell to our bankers a preferred security—a note, secured by a mortgage on this property, in order to finance this purchase.

Q. What effect did the certificate of counsel have on the issuance of securties on this property by the capital issue committee in Washington?

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A. Well, I was under the impression and was told by our bankers that it was absolutely necessary.

By Mr. Jones: That is objected to as hearsay, incompetent, irrelevant and immaterial.

By the Court: Of course, what he was told by his bankers would be; pretty hard to get at it any other way I apprehend.

Q. Do you know anything about the demand of the capital issue concern in Washington, what they required in order to write these securities; had you had experience with them?

A. I had not had any personal experience with them, simply through the reports I received from counsel, and through the reports received through the banking houses who conducted those negotiations. But I was told this. I was given to understand——

By Mr. Jones: I object to what he was told, as hearsay.

By Mr. Hammond: It is a little difficult to get at.

Q. What I am after is this: After Messrs. Holmes, Yankey and Holmes said this title was in their opinion not merchantable, was it possible for you, with that opinion, to finance the company—to finance the purchase of this?

By Mr. Jones: That is objected to as incompetent, irrelevant and immaterial; it couldn't affect this contract.

By the Court: No.

By Mr. Yankey: On the question of whether or not a title is merchantable, it is not a question alone of whether the title was good, or whether this court would say that title is good; it is a question whether or not there is such reasonable doubt the court would say a party could refuse to accept it in good faith because it would be a hazard on account of the defects in the title.

By the Court: I can see. Answer.

(Last question above read to the witness.)

A. Well, a certificate of title that showed no defects was an absolute condition precedent to any transaction I might have with the bankers to obtain the funds to finance this purchase.

Q. When did you first hear from Messrs. Holmes, Yankee and Holmes that this title was not a merchantable title?

A. I can't give you the date but there is a letter in the record here, of which I got a copy, which was delivered to me personally by Holmes, Yankey and Holmes, within a couple of days after the abstract was delivered to them.

Q. The contract provides that if there were any defects in the title the defects were—the seller was to have thirty days to make the defects good. Now, after that thirty days had elapsed did you take up with Messrs. Holmes, Yankey and Holmes the question as to whether the title had been remedied or not, at all?

A. Yes, and I directed——

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By Mr. Jones: Well, the rest is not responsive to that question, i is fully answered.

By the Court: I expect that is true.

Q. After taking that matter up with them what direction did you give to your counsel, whether they were to accept title or refuse to accept it?

A. I directed them if they could not give me a certificate showing a good and merchantable title, in accordance with the contract to decline to accept it on behalf of the Liberty Oil Company.

Q. And after that did you get a certificate as to whether the title was good and merchantable?

A. I got a final certificate that it was not good and merchantable.

Cross-examination.

Questions by Mr. Jones:

Q. Do you know the date on which the original abstract was delivered to your counsel?

A. It is my best recollection that the abstract was delivered to my counsel by the abstract company in El Dorado on the occasion of Mr. Yankey and I going to El Dorado for that purpose on the following Tuesday after the date of the contract, which was Friday.

Q. You don't remember the date?

A. No, I don't remember the date.

Q. Now, after that abstract was delivered to your counsel, they wrote the letter that has been introduced in evidence and sent
69 you a copy, in which they found that certain matters needed correction in this abstract; is that right?

A. Well, the copy was delivered to me in person.

Q. Now, following that time, the correspondence that has been introduced as Exhibits 12 to 23 inclusive passed between the parties to this suit with reference to this controversy?

A. Well, the letters that are addressed to me here, of course, were received by me.

Q. But those with your counsel you have no information of?

A. I believe that I was shown most of the correspondence at the time.

Q. Now you have no information as to just what additional proceedings were had as indicated in those letters; all you know about it was that your counsel told you that ultimately the title was not good?

A. Well, I won't go that far because we were all endeavoring to see if there was not some way that the title could be made good and I was anxious to co-operate with the vendors of this property with the end in view, and it was a sort of around the table proposition all the time with that end in view, until this final showing was attempted and the final letter was written.

Q. What I am trying to get at, Mr. Burdett is, in finally refusing this title did you act on your own judgment or on what your attorneys, Holmes, Yankey and Holmes told you?

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A. Absolutely on the opinion of my counsel.
Q. So then as to whether the title was good, all you pretend to say now is that they told you it was not good?
A. Absolutely.

(Witness excused.)

Thereupon plaintiff rests.

By Mr. Jones: The defendants demur to the evidence in this case for the reason, and upon the ground, it is shown there was a failure to furnish an abstract and title in accordance with the terms and the provisions of the contract.

By the Court: I am not so sure about that. Really the question in this case is not whether the title was good; it is rather a question of what the abstract shows. I will read this petition. (Reading from the contract concerning the furnishing of the abstract.) The question is what the abstract shall show; and I don't know what it shows.

By Mr. Jones: Paragraph eight of that contract provides that even if the contract did not show a good and marketable title to all of said property or that said property is not free from all liens, encumbrances, claims, indebtedness, litigation and so forth that an additional showing might be made that is not requisite to go upon the abstract, and the correspondence which has been introduced, which your Honor has not read, shows there was a lot of proceedings under this thirty day clause; and as far as this evidence goes, it — what his attorney says.

By the Court: I think, according to the terms of the contract, the title to this property would have to be a good, marketable title, free of any liens, incumbrances and so forth, as shown by the abstract. If there was other proceedings taken, under this, it would have to go on the abstract showing corrections, of anything, that was done.

By Mr. Jones: With reference to that, proceedings which were had relating to the contract, during the thirty day period, were never filed and shown on this abstract. They were just handed to the parties and submitted to them and passed back.

By the Court: Now, it is true, this section eight provides: "In the event the examination of said title of said second parties by first party shall disclose that same is not a good and marketable title to all of said property or that said property is not free from all liens, incumbrances, claims, indebtedness, litigations and so forth." Now, all the question that was made to it was—or to be made to it was, as to what was shown on the abstract of title. "Shall disclose that same is not a good and marketable title to all of said property or that said property is not free from all liens, encumbrances, claims, indebtedness, litigations, and contracts (except as hereinbefore *except as hereinbefore* expressly provided) or that said deeds of assignments and transfers and said authority of said officers of said Atlas Petroleum Company are not in accordance with and in compliance with the terms and provisions of this contract, then the said first party shall so notify second parties and they shall have a reasonable

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time, not to exceed thirty days in which to perfect said title, etc. but should second party neglect or refuse to so perfect its said tit within said thirty days, the one hundred thousand dollars shall b returned to the first party and this contract shall become void an each party to this contract shall be absolved from any and all liabilit under the same, or from any damages for the non-fulfillmen thereof."

71 Now this contract provided, in the first place—this is reall not a case in which the one party agreed to furnish a goo and merchantable title to the property they were transferring. Bu they were agreeing to furnish an abstract that showed that. It ma be the same in the end. But this abstract was presented and i here. I have read it. Certain objections to certain matters in whic it did not comply with the contract according to counsel, and it i shown that was handed to the parties they represented. Now the had a reasonable time, not exceeding thirty days, from this time to correct these defects. Now, if they did that within the thirty days, when this is done, is it not then incumbent on the sellers t show what they have done to correct the defects in the abstrac presented before they can call on them to carry forward this——

By Mr. Jones: We don't think so; especially under the circum stances and the handling of the matter as disclosed by the cor respondence in evidence.

By the Court: Well, now let us see about that. Suppose when this abstract of title was examined by counsel and it was returned t you stating specifically in what the defects are thought to consist could you then, without presenting any other abstract, under thi contract? Suppose you said, "Well, gentlemen, we presented th abstract; we are through." Did it not then devolve on you to d one of two things; show that these are not defects on the face of thi abstract, or, if defects, to correct them? Was it not up to you t make a move then?

By Mr. Jones: Yes, I think so.

By the Court: Well, what did you do?

By Mr. Jones: In this particular case——

By the Court: I think right at that point the burden is then o you; that is, within the reasonable time you have to correct—if thes are not valid objections you didn't have to do anything, if they ar valid objections, you had to remove them. Didn't you?

By Mr. Jones: Yes, I think so.

72 By the Court: Then I suppose it becomes incumbent o you to show—if there are any valid objections—either t stand pat and say there is no valid objection taken, or, if you concede there were valid objections, as shown by the abstract, then to remov them.

By Mr. Jones: Now, your Honor, the position we are in, an the position this case is now in, was, that they claimed there wer certain objections; the letters disclose that there was a denial th these objections were valid; but to meet those requirements certai proceedings were had. Now, at the present time there is not an

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howing as to what those proceedings were. So, before your Honor s a contract that required first, an abstract showing title good and narketable in the defendants in this case. Now that was submitted, nd the contention arose between the parties as to whether or not t complied with the contract; and the evidence is that contention xisted and exists now. But in addition to that, certain proceedings ere had, under section eight of the contract, and the way the evi-ence is, there is no showing as to what the proceedings were, and or that reason I think it is demurrable.

By the Court: No, I think not. I think when this objection was ade, you had one of two things to do; you can say, "Gentle-en, that abstract as made up complies with the contract, nd we go no further"; or, if in your judgment there were defects hown on that abstract that wouldn't make the title comply—as hown by the abstract—with the contract, it is up to you to remove in a reasonable time. Now, what did you do to remove them, if ere were any that existed. And I suppose right now you have to ect as you did then. If you say there were not defects according the terms of the contract, then we have to determine; but if you dmit the abstract was defective, the purchaser didn't have to remove ; you had to do it. What did you have to do in curing them. ou are the one that has to furnish this showing. I don't think ur demurrer is good.

By Mr. Jones: We except.

Thereupon, the defendant to sustain the issues upon its part pro-ced and offered evidence, as following:

By Mr. Jones: Defendant offers in evidence Exhibit No. 33, the identification of which is waived, the same being the certificate of the clerk of the District Court, the Second Judicial District of the State of Colorado, in regard to the records in se No. 19938, in the District Court of the City and County of enver, Colorado, in the case entitled, In the Matter of the General ssignment of Joseph J. Crippen, Henry J. Crippen and Henry J. utnam, co-partners as Crippen, Lawrence & Company.

By Mr. Yankey: Now, as to this instrument offered in evidence, xhibit No. 33, there is no objection to the identity of the instru-ent; it is objected to for the reason it is incompetent, irrelevant d immaterial, and for the further reason that the clerk of the istrict Court who purported to make this certificate, that his rtificate to the matters contained in the certificate is hearsay evi-nce.

By the Court: Sometimes matters are hearsay but is the best we n obtain; I don't know what this is based on.

By Mr. Yankey: So the court will understand: This purports to a certificate of the clerk of the District Court of Arapahoe County the effect that the records there did not disclose that there were guardians or conservators or other persons acting in a representa-e capacity, or that any of the debtors were miners, lunatics or rsons suffering under any legal disability.

By the Court: Creditors of Crippen, Lawrence & Company?

CLOSE IN CENTER

By Mr. Yankey: Yes.

By the Court: Sometimes you have to prove a negative from t record. Let it go in.

By Mr. Yankey: We except.

(Exhibit No. 33, above referred to, offered and received in e dence, is as follows:)

74 EXHIBIT 33.

STATE OF KANSAS,
City and County of Denver, ss:

In the District Court of the Second Judicial District of the St of Colorado.

I, J. Sherman Brown, Clerk of the District Court of the Secon Judicial District of the State of Colorado, do hereby certify that appears by the records in case No. 19938, in the District Court of th City and County of Denver, Colorado, which case is entitled in th matter of the General Assignment of Joseph J. Crippen, Henry Crippen and Henry J. Putman, co-partners as Crippen-Lawrence Company, for the benefit of their creditors, Stephen H. Standa was appointed assignee of the estate, both real and personal, and every kind and nature and wherever situated, of said firm of Cri pen-Lawrence & Company, which appointment was made by the deed of general assignment made on the 18th day of Septembe A. D., 1893, and duly recorded in book 947 at page 189, of t records in the office of the Clerk & Recorder of the then Coun of Arapahoe, on said day, and that by said deed said Stephen H Standart, as such assignee, was delegated the statutory powers of general assignee for the benefit of creditors, and that said Steph H. Standart accepted the trust, filed his bond as required by la which bond was duly and regularly approved, and administered t estate of the said assignors and filed his final report as assignee, an that he and the sureties upon his bond were released from the li bility thereunder by order of the above entitled court, upon the 6 day of February, 1899.

That the records in said cause do not show that any of the credito or debtors of said estate were minors, lunatics, or persons sufferi under any legal disability, and do not show that any guardian conservator, or other persons acting in a representative capacity, w appointed by the court, or appeared in said proceeding in connec with the administration of said estate.

Witness My Hand and Seal of said court at the Court House in t City and County of Denver, State of Colorado, this 26th day June, A. D., 1918.

[SEAL.] J. SHERMAN BROWN,
Clerk.
By CORNELIUS WESTERVELT,
Deputy.

COPY BOUND C

By Mr. Jones: I now offer in evidence Exhibit No. 34; it is a certified copy of the petition and order in the same case Exhibit No. 33.

By Mr. Yankey: No objection.

By Mr. Jones: I now offer in evidence Exhibit No. 35; that is a tified copy of the final report of Joseph J. Crippen, Trustee, in same case as Exhibit No. 33.

By Mr. Yankey: No objection.

By Mr. Jones: I now offer in evidence Exhibit No. 36; it is a cer- ed copy of the proceedings on the 14th day of March, 1905; it is certified copy of the approval of the reports of the trustee in the ne case as indicated in Exhibit No. 33.

I now offer Exhibit No. 37, that is a certified copy of a further der of the court in the same case as mentioned in Exhibit No. 33, der the date of February 6, 1889, which is a final report of the ignee in that suit.

I now offer Exhibit No. 38; it is another order in the same case ntioned in Exhibit No. 33, made by the court on the 28th day of nuary, 1895.

By the Court: How does that come? Were all of these records d transcripts and certified copies that you are now introducing cured by you and handed to solicitors for the purchaser within thirty-day period?

By Mr. Jones: Within the thirty day period.

I now offer Exhibit No. 39; that is another certified copy of an der of the court made in the same case as mentioned in Exhibit . 33, on the 19th day of February, 1896.

By Mr. Yankey: Your Honor, a statement was made here—that re may be no misunderstanding, these matters, part of them, were mitted before the thirty days; now there were other matters that re not submitted in the thirty days; but the definite turning down of the title was on the eleventh of July.

By the Court: And all were submitted before that time?

By Mr. Jones: All of these papers, so far. There will come ime, and we will indicate to the court, after the return of the ers. All will be offered.

(Exhibits Nos. 34, 35, 36, 37, 38 and 39, above referred to, offered d received in evidence, are as follows:)

LOSE IN CENTER

EXHIBIT 34.

District Court, City and County of Denver (Formerly Arapah
County), Second Judicial District.

STATE OF COLORADO,
City and County of Denver, ss:

(Formerly Arapahoe County.)

Pleas in the District Court of the City and County of Denv
(formerly Arapahoe County), State of Colorado, in the third d
vision thereof, before the Hon. George W. Allen, one of the judg
of the Second Judicial District of the said State, at a term there
begun and held at the court house in Denver, in said county, o
the second Tuesday (it being the eleventh day) of September, A
D. one thousand eight hundred and ninety-four.

Present:

Hon. George W. Allen, one of the Judges of the District Court.
Robert W. Steele, Esq., District Attorney of said District.
William K. Burchinell, Esq., Sheriff of said County.
Matt Adams, Esq., Clerk of said Court.

STATE OF COLORADO,
Arapahoe County, ss:

In the District Court.

In the Matter of the General Assignment of JOSEPH J. CRIPPE
et al., Co-partners as Crippen, Lawrence & Co., to Stephen H
Standart for the Benefit of Creditors.

77 *Petition.*

Comes now Stephen H. Standart, the assignee in the matter abo
entitled, and respectfully represents and shows to the Court:

That, among other assets coming into his hands as assignee here
was the East half of the Northwest quarter and Lots No. One (1
and two (2), in Section Thirty-one (31), Township Twenty-six (26
Range Five (5), E. Butler County, Kansas, subject to an incum
brance of $1,200.00; which said asset is reported as item No. 815
on page 75 of the inventory and schedule of assets by him file
herein, and his equity in said property was, in said inventory, sche
uled as being of no value.

That the improvements upon said land are in poor condition, an
the income from said property is not sufficient to pay the interes
upon said incumbrance and the taxes and insurance upon said pro
erty.

COPY BOUND CL

That your petitioner has received from one Benjamin Jenkins, a proposition to purchase said property for the sum of $1,325.00, upon the following terms: $125.00 cash, said Jenkins to assume and to agree to pay said incumbrance of $1,200.00. The consummation of said sale does not involve the payment of any commission.

That your petitioner, believing that it is for the best interest of said assigned estate and of the creditors thereof, that said sale be made, has, therefore, accepted said proposition to purchase, subject to the approval of this Court.

That your petitioner has no personal interest, either directly or indirectly, in the said transfer, or any benefits that arise therefrom.

Wherefore your petitioner prays that the sale of said property, upon the said terms, be approved and confirmed, and that he be authorized, empowered and directed to execute good, proper and sufficient deed of conveyance therefor, in the consummation of said sale.

LIPSCOMB & HODGES,
Attys. for S. H. Standart, Assignee.

STATE OF COLORADO,
Arapahoe County, ss:

Stephen H. Standart, being first duly sworn, on his oath deposes and says, that he is the same person named as assignee in the matter above entitled, that he has read the foregoing petition, knows the contents thereof, and that the matters and things therein 78 stated and alleged are true of his own knowledge, except as to such thereof as are therein stated on information and belief, and that as to those he believes them to be true.

STEPHEN H. STANDART.

Subscribed and sworn to before me, this 8th day of September, A. D. 1894. My commission expires March 30, 1897.

[SEAL.] EDWARD L. SHANNON,
Notary Public

Endorsed: No. 19938. In the District Court. In re Assignment of Crippen-Lawrence & Co. Petition in re Sale of Certain Lands in Butler Co., Kans., to B. Jenkins. Filed in District Court, Arapahoe County, Colo., Sept. 11, 1894. Matt Adams, Clerk.

Be It Remembered, that heretofore and on to-wit the 11th day of September, A. D. 1894, the same being one of the regular judicial days of the September Term 1894 of said court, the following proceedings, inter alia, were had and entered of record in said court, to-wit:

CLOSE IN CENTER

No. 19938.

In the Matter of the General Assignment of JOSEPH J. CRIPPEN et al. Co-partners as Crippen, Lawrence & Co., to Stephen H. Standart for the Benefit of Creditors.

Upon reading the verified petition of Stephen H. Standart, the assignee herein, touching the sale by him, as such assignee, to one Benjamin Jenkins, of the East half of the Northwest quarter (E. ½ of the N. W. ¼) and lots No. One (1) and Two (2), in Section Thirty-one (31), Township Twenty-six (26), Range Five (5), E. in Butler County, Kansas, for the sum or price of $1,325.00; of which said sum $125.00 is to be paid cash, and the said Jenkins is to asume and to agree to pay an incumbrance of $1,200.00 now upon said property; and the Court being sufficiently advised in the premises, and it appearing to be for the best interest of said assigned estate and of the creditors thereof, doth hereby consider and adjudge that the said sale of the said property, upon the above mentioned terms, be and the same is hereby approved and confirmed; and the said Stephen H. Standart, as assignee herein, is hereby authorized,
79 empowered and directed, upon the payment of said sum of $125.00, to execute to the said Benjamin Jenkins, good, proper and sufficient deed of conveyance of said above described property, in the consummation of said sale.

By the Court:

GEO. W. ALLEN,
Judge.

Dated Sept. 11th, A. D. 1894.

City and County of Denver, ss:
STATE OF COLORADO,

I, J. Sherman Brown, Clerk of the District Court of the City and County of Denver, State aforesaid, do hereby certify the above and foregoing to be a true, complete and perfect transcript and copy of Petition and Order of Court had and entered of record in a certain cause in said Court lately depending wherein In the Matter of the General Assignment of Joseph J. Crippen et al., Co-partners as Crippen, Lawrence & Co., to Stephen H. Standart, for the Benefit of Creditors, as the same now remains on file and of record in this office.

Witness my hand and seal of said Court, at the Court House in Denver, County and State aforesaid, this 10th day of June, A. D. 1918.

[SEAL.]

J. SHERMAN BROWN,
Clerk.

H. W. PROUTY,
Deputy Clerk.

COPY BOUND C

(Endorsed: No. 19938. In Re the General Assignment of Joseph J. Crippen et al., etc., Plaintiff, vs. —— ——, Defendant. Copy of Petition and Order of Court. District Court, City and County of Denver, Denver, Colo. J. Sherman Brown, Clerk.)

EXHIBIT 35.

STATE OF COLORADO,
City and County of Denver, ss:

In the District Court.

No. —.

In the Matter of the Assignment of CRIPPEN, LAWRENCE & COMPANY; Stephen H. Standart, Assignee.

Final Report of Joseph J. Crippen, Trustee.

Comes now Joseph J. Crippen, Trustee, heretofore designated and appointed as Trustee in the above entitled proceeding by this court, and submits herewith full, true and complete reports of receipts and disbursements made by him as such Trustee, on account of the property received by him from the Assignee in the above entitled
80 proceedings, from the 20th day of January, 1905, to the date of this report, as per attached statements and re-capitulations thereof.

Also attached hereto is a copy of my letter of this date to Oscar Reuter, Attorney, for the Merrimack River Savings Bank and A. H. Hale, with the original of which I delivered to him the documents therein mentioned.

JOSEPH J. CRIPPEN,
Trustee.

Dated March 13th, 1905.

STATE OF COLORADO,
City and County of Denver, ss:

JOSEPH J. CRIPPEN, being first duly sworn, on his oath deposes and says: That he is the Trustee above named; that he has read the foregoing report and the statement attached thereto, and that the matters and things therein set forth are true of his own knowledge.

JOSEPH J. CRIPPEN.

Subscribed and sworn to before me this 13th day of March, A. D. 1905.

My commission expires 9th December A. D. 1906.

[SEAL.]

FRANK ROBERTON,
Notary Public.

CLOSE IN CENTER

Statement of Receipts and Disbursements by J. J. Crippen, Trustee, in the Matter of the Merrimack River Savings Bank Trust from January 20, 1905, to March 13, 1905, in Connection with the Estate of Crippen, Lawrence & Company.

Disbursements.

1905.			
Jany.	20.	Amt. to date as per last statement.....	$122,803.73
	23.	Camfield, 7,490, Phone to Greeley.....	.30
Feb.	7.	Yerby, 8,841, Bailing and Hauling Hay....	73.16
	11.	Johnson, 8,690, Local com. & Exchange....	15.75
	23.	Yerby, 2,841, Surveying Lawn Ditch.....	15.75
	24.	Kinney, 9,575, Recording Deed.....	2.00
	Total	.....	$122,902.89

81

Receipts.

1905.			
Jany.	20.	Amt. to date as per last Statement.....	$442,677.59
	23.	Coryell, 6,807, Acct. Sale Contract.....	50.
		Burton, 7,420, 7,421, Acct. Sale Cont. Int. 2-1-5	6.
Feby.	1.	Tuttle, 9,980, Sale Cont. Tct. 1, Int. 2-16-5	30.00
	7.	Yerby, 8,841, 79,090 lbs. Hay at $6.50 per ton	256.91
	11.	Johnson, 8,690, Rent to 2-10-5.....	150.00
	15.	Johnson, 15,027, Int. to 3-13-5.....	15.00
	16.	Tuttle, 9,980, Sale Cont. Tct. 2, Int. 2-16-5..	33.00
	18.	Tuttle, 9,980, Sale Cont. E ½ Tct. 12, Int. 3-1-5	12.00
	20.	McClelland, 13,495, Int. to 2-21-5.....	70.00
	28.	Tuttle, 9,980, Sale Cont. Tct. 20, Int. 2-1-5..	54.
Mar.	3.	Child, 10,445, Pt. Rent 1905, B-R 9,063....	150.00
		Kinney, 9,575, Retd. overpmt. a-c Recdg. Deed	1.40
			$443,505.90

COPY BOUND C

Recapitulation of Receipts and Disbursements as Shown by Statement of March 13, 1905, Hereto Attached.

Receipts	$443,505.90	
Receipts, Collected interest on Loans at various times. (As shown by itemized statement attached to report of Sept. 1, 1903, but not included in Recapitulation of that date.)	33,121.12	
Excess Account. (Same as last Statement.)	10,347.96	
Advances by Merrimack River Sav. Bk. (Same as last Statement.)	31,077.84	
Disbursements		$122,902.82
Remittances to Merrimack River Sav. Bk., former statements		359,622.67
Remittances to Merrimack River Sav. Bk., made by Concord Office, a-c Int. on Loans		33,121.12
Balance, Paid today to Oscar Reuter, Attorney of Merrimack River Savings Bank, and A. H. Hale		2,406.21
	$518,052.82	$518,052.82

c2 The assets conveyed and transferred to Arthur H. Hale, described in the annexed receipt are valued at one hundred and thirty-two thousand and seventy-five dollars ($132,075), which amount is to be credited to the said Crippen, Lawrence & Company, as part of the unpaid balance due from them to said Merrimack River Savings Bank.

The Crippen, Lawrence Investment Company,

Duff Block, Cor. 18th and Larimer Sts.

Denver, Colo., March 13, 1905.

M. R. S. Bk T.

Oscar Reuter,
Attorney of Merrimack River Savings Bank, and
A. H. Hale,
Denver, Colo.

DEAR SIR:

I hand you herewith in connection with the Merrimack River Savings Bank Trust, the following:

Lease 7550, Pryor, G. W. Gill.
Lease 7655, Betts, G. W. Dalton.
Lease 7988, Butler, G. Lantz.

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Lease 8295, Tribble, J. D. Tribble; also B-R 9018, Tribble, $75 d
3-1-05.

Lease 8690, Johnson, H. F. Cope.

Lease 8841, Yerby, J. C. Dewall.

Lease 9144, Hall, W. D. Davidson.

Lease 9980, Tuttle, A. Bergman; also B-R 8835, Bergman, $100.
due, 2-1-05.

Lease 10445 Child, J. Russell; also B-R 9064, Russell, $150.
due, 11-1-05.

Sale Contract 7417, Burton, Fred McDonald; also Ctf. 10 38 f
144 shares of the Fort Lyons Canal Co. stock endorsed in blank b
J. J. Crippen, Trustee.

Sale Contract 7420 and 7421, Burton, H. P. Holmquist; also C
10 41, for 72 shares of the Fort Lyons Canal Co. stock endorsed i
blank by J. J. Crippen, Trustee; and Ctf. 10 52 for 72 shares of Th
Fort Lyons Canal Co. stock endorsed in blank by J. J. Cripp
Trustee. Also Holmquist note $200.

Sale Contract 6897, Coryell, E. C. Popejoy; also Ctf. 242 for
shares of the Prairie Ditch Company stock, endorsed by W. R
83 Herrick, Trustee, in favor of J. J. Crippen, Trustee, and i
blank by J. J. Crippen, Trustee.

Sale Contract 9980, Tuttle, T. S. Woods on Track 1, Brookside

Sale Contract 9980, Tuttle, R. E. Mahoney on Tract 2, Brookside

Sale Contract 9980, Tuttle, A. M. Killam on E. 1-2 Tract 11
Brookside.

Sale Contract 9980, Tuttle, C. Kullerstrand on E. 1-2 Tract 1
Brookside.

Sale Contract 9980, Tuttle, E. Kullerstrand on W. 1-2 Tract 12
Brookside.

Sale Contract 9980, Tuttle C. Kullerstrand on W. 1-2 Tract 1
Brookside.

Sale Contract 9980, Tuttle, N. M. Nelson on E. 1-2 Tract 1
Brookside.

W. 1-2 Tract 14, Brookside.

Sale Contract 9980, Tuttle, C. T. Wallis, on Tract 20, Brookside

Sale Contract 9021, Mansfield, J. A. Enright, on Deed from J. J
Crippen, Trustee, in favor of J. A. Enright, covering the propert
described in this contract, is deposited with The Crippen, Lawrenc
Investment Company in escrow.

Water Stock 8841, Yerby, Ctf. No. 21 for 20 shares of The War
rior Ditch Company stock endorsed in blank by W. R. Herrick
Trustee.

Water Stock 8841, Yerby, Ctf. No. 21 for 90 shares of The Har
riman Ditch Company stock endorsed in blank by J. J. Crippen
Trustee.

Water Contract 8841, Yerby, Copy of contract of May 24, 1898
between J. J. Crippen, Trustee, and The Denver Union Water Co.
the Merrimack River Savings Bank and the New Hampshire Rea
Estate Co., re The Harriman Ditch Company stock.

Water Stock 9372, Thomas, Ctf. No. 192 for 1 7-8 shares Old

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Union Ditch Company stock endorsed in blank by J. J. Crippen, Trustee.

Ins. Policy 7655, Betts, No. 2,981,922, Scottish Union & National Ins. Co., $500.

Ins. Policy 7988, Butler, No. 925, Springfield Fire & Marine Ins. Co., 2000.

Ins. Policy 8690, Johnson, No. 4,454,970, Norwich Union Fire Ins. Society, 3000.

Ins. Policy 8690, Johnson, No. 739, Ins. Co. of North America, 500.

Ins. Policy 8690, Johnson, No. 4,454,956, Norwich Union Fire Ins. Society, 500.

Ins. Policy 8690, Johnson, No. 748, Ins. Co. of North America, 3000.

Ins. Policy 8690, Johnson, No. 1278, Philadelphia Underwriters, 2000.

Ins. Policy 8690, Johnson, No. 10773, Liverpool, London & Globe Ins. Co., 2000.

Ins. Policy 8841, Yerby, No. 2,981,766, Scottish Union & National Ins. Co., 1500.

Ins. Policy 9732, Thomas, No. 2,320,059, Firemans' Fund Ins. Co., 1200.

Ins. Policy 10445, Child, No. 172, Aetna Ins. Co., 2600.

Ins. Policy 12492, Williamson, No. 3629, Mill Owners' Mutual Fire Ins. Co., 4000.

Ins. Policy 12492, Williamson, No. 2686, Western Millers' Mutual Fire Ins. Co., 5000.

Ins. Policy 12492, Williamson, No. 06379, Michigan Millers' Fire Ins. Co., 5000.

Ins. Policy 12492, Williamson, No. 16808, Millers' Natl. Ins. Co., 5000.

Ins. Policy 13495, McClelland, No. 1261, Philadelphia Underwriters, 1000.

Ins. Policy 13495, McClelland, No. 732, Ins. Co. of North America, 1000.

Ins. Policy 15009, Amador, No. 171635, National Fire Ins. Co., 700.

Q. C. Deed favor A. H. Hale, 7417, Burton, Bent Co., Colo.
7420
7421

Q. C. Deed favor A. H. Hale, 8690, Johnson and 9252, Stevens, Chaffee Co., Colo.

Q. C. Deed favor A. H. Hale, 8290, Osborne, and 9144, Hall, Saguache Co., Colo.

Q. C. Deed favor A. H. Hale, 8322 Mick.

Q. C. Deed favor A. H. Hale, 6807, Coryell, Costilla Co., Colo.

Q. C. Deed favor A. H. Hale, 8295, Tribble, Fremont Co., Colo.

Q. C. Deed favor A. H. Hale, 10445, Child, Huerfano Co., Colo.

Q. C. Deed favor A. H. Hale, 10737, Ogle and 9372, Thomas, Yakima Co., Wash.

Q. C. Deed favor A. H. Hale, 9021, Mansfield, Weld Co., Colo.

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Q. C. Deed favor A. H. Hale, 7655, Betts, and 7550, Pryor, P
eblo Co., Colo.
Q. C. Deed favor A. H. Hale, 8841, Yerby, Jefferson Co., Colo.
Q. C. Deed favor A. H. Hale, 9980, Tuttle, Jefferson Co., Col
conveying tracts Nos. 1-2-3-4, E. 1-2 11-12-13, W 1-2 14-17-18-1
20-21-22-23, S. 1-2 24, Brookside.

Also herewith find copy of my report of this date to the cou
and the Crippen, Lawrence Inv. Co.'s check No. 18312, on Fi
National Bank, Denver, to my order for $2,406.21, endorsed in y
favor.

Yours very truly,

——— ———.

Received the above mentioned papers.

OSCAR REUTER,
Attorney for Arthur H. Hale.

Endorsed: 19938. In re Assignment of Joseph J. Crippen, et a
Filed in District Court, City and County of Denver, Mar. 14, 19
Otis B. Spencer, Clerk.

STATE OF COLORADO,
City and County of Denver, ss:

I, J. Sherman Brown, Clerk of the District Court of the City an
County of Denver, State aforesaid, do hereby certify the above an
foregoing to be a true, complete and perfect transcript and copy o
final report of Joseph J. Crippen, trustee, had and entere
86 of record in a certain cause in said Court lately depending
wherein in the matter of the assignment of Crippen, Law
rence & Company, Stephen H. Standart, assignee, as the same no
remains on file and of record in this office.

Witness my hand and seal of said Court, at the Court House in
Denver, County and State aforesaid, this 11th day of June, A. D
1918.

[SEAL.]

J. SHERMAN BROWN,
Clerk.

H. W. PROUTY,
Deputy Clerk.

(Endorsed: No. 19938. In re Assignment of Joseph J. Crippe
et al. Plaintiff, vs. ——— ———, Defendant. Final Report of Joseph
Crippen, Trustee. District Court, City and County of Denver, De
ver, Colo. J. Sherman Brown, Clerk.)

COPY BOUND C

Exhibit 36.

District Court, City and County of Denver, Second Judicial District.

State of Colorado,
City and County of Denver, ss:

Pleas in the District Court of the City and County of Denver, State of Colorado, in the Fourth Division thereof, before the Hon. Booth M. Malone, one of the judges of the Second Judicial District of the said State, at a term thereof begun and held at the Court House in Denver, in said county, on the second Tuesday (it being the tenth day) of January, A. D. one thousand nine hundred and five.

Present:

Hon. Booth M. Malone, one of the Judges of the District Court.
Henry A. Lindsley, Esq., District Attorney of said District.
Hamilton Armstrong, Esq., Sheriff of said County.
Otis B. Spencer, Esq., Clerk of said Court.

Be it remembered, that heretofore and on to-wit the 14th day of March, A. D. 1905, the same being one of the regular juridical days of the January Term 1905 of said court, the following proceedings, inter alia, were had and entered of record in said court, to-wit:

No. 19938.

In the Matter of the General Assignment of Joseph J. Crippen et al., Co-partners as Crippen, Lawrence & Company, to Stephen H. Standart, Assignee, for the Benefit of Creditors.

This cause coming on to be heard by the Court this 14 day of March, A. D. 1905, the same being one of the regular judicial days of the January Term A. D. 1905 of the District Court of the City and County of Denver, State of Colorado, [illegible] Merrimack River Savings Bank appearing by Oscar Reuter, Esq., its attorney, and Joseph J. Crippen, Trustee, appearing by Hodges, Wilson & Hodges, his attorneys, upon the petition of said Joseph J. Crippen, Trustee, for fixing his compensation, the approval of his reports filed herein and for his discharge, and the reports of said Trustee of all cellections and disbursements, all sales and purchases of real estate made for the trust estate, and the disposition of all said trust property and the compensation deducted by the said Trustee for services rendered personally and by The Crippen, Lawrence Investment Company, and upon the record of this cause, and upon evidence submitted to the court, and upon the agreement of counsel that the compensation heretofore charged and paid is reasonable and in full for all services performed, and it appearing to

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the court that the compensation heretofore charged and paid reasonable and in full for all services performed and that by ord dated the 22nd day of January, A. D. 1896, the Assignee in th cause was directed to advertise and sell all of the assets in his han belonging to Crippen, Lawrence & Company, assignors herein, th pursuant thereto the said Assignee did on to-wit, the 17th day February A. D. 1896, make a sale of all the interest of said Co pany in the property then held by Joseph J. Crippen in trust und the order of this court, to The New Hampshire Real Estate Co pany, a corporation organized under the laws of the State of Ne Hampshire, which said sale was thereafter and on to-wit: the 18 day of Feb. A. D. 1896 ratified and confirmed by this court; an it further appearing that said The New Hampshire Real Estat Co. has by deed assigned and set over to Arthur H. Hale all of i right, title and interest in and to the said trust property and th proceeds thereof, and that the said trust company and the proceed of said trust property do not pay and satisfy the indebtedness s said Crippen, Lawrence & Company to said The Merrimack Riv Savings Bank, and it further appearing to the court that the sai Bank desires the conveyance of all real property now in the hand of said Joseph J. Crippen, as Trustee, to Arthur H. Hale of Hill boro County, State of New Hampshire, and it further appearin that the term for which said trust was created has expired, and th said Joseph J. Crippen has well, truly and faithfully administered said trust and accounted for all properties and monies that hav come into his hands, and that all disbursements were properly made

88 and that compensation charged by said trustee for his serv ices and those of The Crippen, Lawrence Investment Com pany is just and reasonable; and the court heing now fully and sufficiently advised in the premises.

It is, therefore, ordered, adjudged and decreed that the report of the said trustee, and all of his acts and doings therein set forth be and they are hereby approved, ratified and confirmed; that his compensation be fixed at the sum therein appearing as charged to the said Trustee and The Crippen. Lawrence Investment Company; that said Trustee execute and deliver to Arthur H. Hale quit claim deeds to all property now remaining in the name of Joseph J. Crippen, Trustee, and being part of said trust estate; that said Trus tee be discharged and relieved from further duty or obligation with regard to said trust estate.

Done in open court this 14th day of March, A. D. 1905.

By the Court:

BOOTH M. MALONE,
Judge.

COPY BOUND

We have read the foregoing order and consent to the entry thereof.

MERRIMACK RIVER SAVINGS BANK, [SEAL.]
By FREEMAN HIGGINS,
Presd., Duly Authorized.

[SEAL.] THE NEW HAMPSHIRE REAL ESTATE COMPANY,
(Corporate Seal.) By JOHN F. JONES,
President.

Attest:
JOSIAH E. FERNALD,
Secretary.

TATE OF COLORADO,
City and County of Denver, ss:

I, J. Sherman Brown, Clerk of the District Court of the City and ounty of Denver, State aforesaid, do hereby certify the above and oregoing to be a true, complete and perfect transcript and copy f Order of Court had and entered of record in a certain cause in id Court lately depending wherein in re general assignment of oseph J. Crippen et al., co-partners as Crippen, Lawrence & Co., tc., for the benefit of creditors, as the same now remains on file nd of record in this office.

Witness my hand and seal of said Court, at the Court House in enver, County and State aforesaid, this 10th day of June A. D. 918.

[SEAL.] J. SHERMAN BROWN,
Clerk.

H. W. PROUTY,
Deputy Clerk.

9 (Endorsed: No. 19938. In re General Assignment of Joseph J. Crippen, et al. Plaintiff-, vs. Discharging J. J. Crippen Defendant. Copy of Order of Court. District Court, City and County of Denver, Denver, Colo. J. Sherman Brown, Clerk.)

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EXHIBIT 37.

District Court, City and County of Denver (formerly Arapahoe County), Second Judicial District.

STATE OF COLORADO,
City and County of Denver, ss:

(Formerly Arapahoe County.)

Pleas in the District Court of the city and county of Denver (formerly Arapahoe County), State of Colorado, in the first division therefor, before the Hon. George W. Allen, one of the judges of the Second Judicial District of the said State, at a term thereof begun and held at the court-house in Denver, in said county, on the second Tuesday (it being the 10th day) of January, A. D. one thousand eight hundred and ninety-nine.

Present:

Hon. George W. Allen, one of the Judges of the District Court.
Booth M. Malone, Esq., District Attorney of said District.
Robert J. Jones, Esq., Sheriff of said County.
Elias F. Dunlevy, Esq., Clerk of said Court.

Be it remembered, that heretofore and on, to-wit, the 6th day of February, A. D. 1899, the same being one of the regular judicial days of the January Term 1899 of said court, the following proceedings, inter alia, were had and entered of record in said court, to-wit:

In the matter of the General Assignment of Joseph J. Crippen, Henry J. Crippen, and Henry J. Putman, Co-partners as Crippen, Lawrence & Company, to Stephen H. Standart, as Assignee, for the Benefit of Creditors.

The matter above entitled coming on to be heard on the 6th day of February, A. D. 1899, upon the final report of the said Assignee, and upon his application for his discharge, and the discharge of the sureties on his bond herein given as such Assignee, from all liability in behalf of said estate, and upon exceptions to the said final report filed herein on behalf of The New Hampshire Savings Bank of Concord, N. M., and The Merrimac River Savings Bank of Manchester, N. H., preferred creditors of said assigned estate;
90 and it appea-ing to the court that due notice to all the creditors had been given of the filing of said final report and application for discharge, as prescribed by law; and it further appearing that the said Assignee has in all respects complied with the orders of this court with respect to said assignment and has fully accounted for all moneys and properties coming into his hands as such Assignee, and the Court being fully advised in the premises;

It is therefore ordered, adjudged and decreed by the court, That the exceptions herein filed by The New Hampshire Savings Bank,

and by The Merrimac River Savings Bank, aforesaid, be, and the same are hereby overruled, and that the said Stephen H. Standart, Assignee, herein, be, and he is hereby fully discharged from all liability in behalf of said assigned estate, and that the sureties upon the bond heretofore given by him as such assignee herein, be, and each and every of them are hereby fully discharged from all liability in behalf of said estate.

By the Court:

GEO. W. ALLEN,
Judge.

Dated February 6th, A. D. 1899.

STATE OF COLORADO,
City and County of Denver, ss:

I, J. Sherman Brown, Clerk of the District Court of the City and County of Denver, State aforesaid, do hereby certify the above and foregoing to be a true, complete and perfect transcript and copy of Order of Court Discharging Assignee had and entered of record in a certain cause in said Court lately depending, wherein in re the General Assignment of Joseph J. Crippen, et al., Co-partners as Crippen, Lawrence & Company, to Stephen H. Standart, as Assignee for the Benefit of Creditors, as the same now remains on file and of record in this office.

Witness my hand and seal of said Court, at the Court House in Denver, County and State aforesaid, this 10th day of June, A. D. 1918.

[SEAL.]

J. SHERMAN BROWN,
Clerk.

H. W. PROUTY,
Deputy Clerk.

(Endorsed: No. 19938. In Re Assignment of Joseph J. Crippen, et al. Plaintiff vs. final report of Standart, Defendant. Copy of Order. District Court, City and County of Denver, Denver, Colo., J. Sherman Brown, Clerk.)

91 EXHIBIT 38.

District Court, City and County of Denver (formerly Arapahoe County), Second Judicial District.

STATE OF COLORADO,
City and County of Denver, ss:

(Formerly Arapahoe County.)

Pleas in the District Court of the City and County of Denver (formerly Arapahoe County), State of Colorado, in the third division thereof, before the Hon. George W. Allen, one of the judges of the Second Judicial District of the said State, at a term thereof begun and held at the court-house in Denver, in said county, on the second Tuesday (it being the eighth day) of January, A. D. one thousand eight hundred ninety-five.

Present:

Hon. George W. Allen, one of the Judges of the District Court.
Greely W. Whitford, Esq., District Attorney of said District.
Wm. K. Burchinell, Esq., Sheriff of said County.
Matt Adams, Esq., Clerk of said Court.

Be it remembered, that heretofore and on to-wit, the 28th day of January, A. D. 1895, the same being one of the regular judicial days of the January Term, A. D. 1895 of said Court, the following proceedings, inter alia, were had and entered of record in said Court, to wit:

No. 19938.

In the Matter of the General Assignment of JOSEPH J. CRIPPEN et al., Co-partners as Crippen, Lawrence & Co., to Stephen H. Standart for the Benefit of Creditors.

The matter above entitled coming on to be heard before the Court, on the 21st day of January, A. D. 1895 (said hearing having been continued to said date), upon the petition of the said Stephen H. Standart, Assignee herein, praying instructions from, and the direction of, this Court with respect to certain loans aggregating $391,400.00 of principal, held by The Merrimack River Savings Bank, of Manchester, New Hampshire, and which were negotiated by the said assignors and sold to the said Bank, and the payment thereof guaranteed, in writing, by the said Assignors; due notice of the said hearing, pursuant to direction of the Court, having been published; And it appearing to the Court, from the said petition, that, of the said Loans held by said The Merrimack
92 River Savings Bank, there is secured upon property in which the said assignee holds the legal title, subject only to the

liens of first trust deeds held by said Bank, the principal sum of about $142,300.00, upon all of which there is interest defaulted, and taxes, water dues, and other charges in arrears, for more than one year; and there are also defaults of interest, taxes, water dues and other charges in arrears for more than one year on the further principal sum of about $103,400.00, of the said loans held by said Bank, making in all about $245,700.00 of principal in default with interest, taxes, water dues, and other charges accrued thereon, amounting to upwards of $38,000.00, leaving about $145,700.00 of said loans on which no defaults have yet accrued; and that on the properties upon which the said loans are secured as aforesaid, in which no title or equity has been taken over to or become vested in the said Assignee, the said Assignee holds about $8,467.00 of second trust notes, about $1,800.00 of which are pledged to secure bills payable of the said assignors.

And it further appearing to the Court that the said assignee is unable to pay up the said arrearages of interest, taxes, water dues and other charges, without great sacrifice being made, with respect to other assets, which are in his hands, as the assignee herein, and that the said assignee will be unable longer to deter the said Bank from taking action to foreclose on all of the said defaulted loans, and to secure titles to and control over the said properties upon which the said loans are secured; and it further appearing to the Court that such action would be almost certain to result in producing heavy claims for deficiencies, which would be asserted by said Bank as against the general assets of said assignors; and it further appearing to the Court, that, as the result of negotiations between the said assignee and the said Bank, a proposal in writing, executed by A. H. Hale, the trustee and authorized agent of the said Bank, has been made upon its behalf, which written proposal is in the words and figures following, to-wit:

Manchester, N. H., Nov. 12, 1894.

S. H. Standart, Esq.,
Assignee of Crippen, Lawrence & Co.,
Denver, Colo.

DEAR SIR:

The undersigned, the Merrimack River Savings Bank of Manchester, N. H., as you are aware, owns and holds, of loans negotiated by your assignors, Crippen, Lawrence & Co., the payment of which is guaranteed by them in writing, an aggregate of $391,400,
93 of principal, $245,700 of which is defaulted in payments of interest, taxes, water dues, &c., amounting to about $38,-113.38, and $142,300.00 of which is secured by trust deeds and mortgages upon real estate in the States of Colorado and Kansas, in which you, as Assignee, own and hold the equities subject to said liens held by us, as we are advised, and other of which is secured by trust deeds and mortgages on lands upon which you, as Assignee, hold subsequent liens by way of trust deeds and mortgages, as we are advised.

More than a year has elapsed since the assignment of Crippen, Lawrence & Co. was made, and we have patiently awaited the possible event of all arrears of interest, taxes, water dues, &c. being adjusted and paid by you, as the assignee, hoping and rather expecting that you would find it advisable and yourself able to preserve your equities as assignee by making such adjustment and payment.

We have at last concluded that we cannot prolong further the matter of securing control of properties on which we hold liens in default, by foreclosure, and securing ourselves as to deficiencies by filing and proving same as general creditors against the assigned estate, unless the defaulted interest, taxes, &c. are promptly paid up, or the entire properties upon which defaulted loans are secured is so administered as that we shall receive all income therefrom and avails thereof for application toward payment of said defaulted interest, taxes, &c. and the principal of loans secured thereupon, treating all of said defaulted loans as one loan for the purpose of such administration, and extending ample time for the best results to be secured for all concerned, we therefore make you the following proposition for submission by you to the Court having control of your assignment:

That we will consent that all equities held by you as the assignee of Crippen, Lawrence & Co. in properties upon which we hold loans secured, may be transferred to either the Crippen Lawrence Investment Co., or to Joseph J. Crippen, as trustee (it being the purpose in either event to secure the personal services and attention of the said Joseph J. Crippen, in whose integrity and ability and facilities for making the utmost out of them for all parties in interest, we have an abiding faith and confidence) to be by him so administered under the control and direction of said Court as that the entire incomes, proceeds and avails of said properties and equities, shall be applied towards the payment of defaulted interest, taxes, water dues and other arrears on any and all loans secured upon any and all of such properties, and the principals of such loans as well, it being
94 understood that we shall only insist upon the rate of interest specified in coupons attached to the notes or bonds so secured, waiving all provisions as to increased interest in cases of default; and that with respect to cases where defaults exist, or may hereafter occur in the payment of any of said loans or the taxes, interest or other charges thereon, which are secured upon properties in which you, as assignee, hold no interest or equity, but where it shall be necessary to foreclose and resort to the securities, the same shall be handled and administered by said trustee, in the same manner, for the same uses and purposes, and in conjunction with the properties in which your interest, as assignee, shall be so transferred as aforesaid; and that where foreclosures are made, the same shall be made for the benefit of such trust, and where titles to any of said properties are secured to said trustee by foreclosure or otherwise, all gains or advantage accruing on resale of said properties shall enure to said trust, and that to the end that sacrifices may be prevented, the Bank will make such extensions of time for the payments of loans maturing or defaulted, or renewals thereof, as may be desired, it being

understood that no guarantees shall be waived or extinguished by such extensions or renewals, but that as to all loans which have been guaranteed by the said Crippen, Lawrence & Co., said guaranties shall continue to the same extent as originally expressed, without diminution or enlargement, and to be so provided by such order, if any, as the Court may make with respect to said trust.

That all expenses of handling and managing said properties and of administering said trust, will be provided for by us, to be paid out of funds realized out of said properties, and the matter of the administration of such assets and properties shall at all times be subject to the intervention and control of the Court having jurisdiction and control over the assignment; that statements and reports of said administration may be required by said Court, from time to time, and finally that final settlement and adjustment of said matters shall be made with you, as assignee, and the officer of said Court, or your successor or assigns, under its directions.

Any surplus of assets or proceeds thereof being in said land, after fully paying all loans and interest due and accruing, together with all advances made for the benefit of said trust and interest thereon to the undersigned Bank, its successors or assigns, which are so secured and guaranteed as aforesaid, together with the expenses of such administration, to be turned over to you as such assignee, or to your successor or assigns, and any deficiency that may arise to be treated as a claim against the assigned estate.

95 The trust which we propose to be created, with respect to said properties and assets, may be created for a term of ten years from and after its creation, unless sooner terminated by the Completion of the business relating thereto. Unless the foregoing arrangement can be made in effect, we deem it our duty to secure control of the properties by foreclosure, so that we may handle them exclusively as we may see fit.

Yours truly,

(Signed) THE MERRIMACK RIVER SAVINGS BANK,

By A. H. HALE,

Trustee.

And after careful consideration of the proposals in said writing contained and set forth, and of all the circumstances affecting the said loans, it appearing to the Court to be for the best interest of the said assigned estate and of the general and unsecured creditors thereof, that time and opportunity should be given for the administration of the said loans and the properties upon which the same are secured, to the best advantage; and it appearing, also, that Joseph J. Crippen, by reason of his character, experience and abilities, as well as his special knowledge with respect to the said properties is a proper person to administer the said assets; and the Court being now sufficiently advised in the premises with respect to the matters in said petition set forth, doth hereby authorize, empower and direct the said Stephen H. Standart, as the Assignee herein, to accept the said proposal of said The Merrimack River Savings Bank; and

to make execute and deliver to the said Joseph J. Crippen, as trustee, for the said several uses and purposes enumerated and set forth in the said written proposal of the said Bank, hereinbefore, and in said petition recited, proper and effectual instrument or instruments of writing, containing full recitals and declaration of the said uses and purposes for which the said trust is created, and conveying and transferring to him, the said Joseph J. Crippen, as such trustee, in trust for said uses and purposes, with full power and authority to the said trustee, to sell and convey the same, and to accept in, and as part payments therefor, notes and other obligations secured by trust deeds, or mortgages, upon the same or other properties, using such agencies and interventions as may be deemed by the said trustee to be for the best advantage to the said trust; all lands and property, the equities or legal titles in and of which the said Stephen H. Standart, as Assignee herein, holds or has vested in him, subject to the liens of trust deeds, mortgages, or other incumbrances existing and subsisting as security for loans held by the said The Merrimack River Savings Bank, which were guaranteed by the said assignors herein, as aforesaid, giving and securing to the said trustee,
96 jointly with the said assignee, but not so as to in any manner obstruct or deprive the said assignee of the use thereof in the course of his administration herein, the privilege to use the books and records formerly kept by the said assignors, (the same to be kept and to remain in the possession and under the control of the said assignee herein), for the purpose of facilitating the administration of said trust.

The said trust so created with respect to said properties and assets to be thereby affected by the terms of said proposal, shall continue for a term of ten years from and after the acceptance *thereby* the assignee herein, by conveyance and transfer as hereinabove provided for, unless sooner terminated by completion of the business relating thereto, or by other means agreeable to both the said Bank and the said Assignee, or their respective successor or successors by and with the approval of this Court; and in case of the death or inability of the said trustee to act, his successor may be selected as may be agreed upon between the said Bank and the said assignee, or their successors, by and with the approval of this Court.

And with respect to the said trust, it is hereby expressly considered and provided, that as to such extensions of time for the payments of loans maturing or defaulted, or such renewals thereof as may be made by the said Bank, or the said Trustee, there shall be no waiver or extinquishment by such extensions or renewals of the said guaranties of the said Crippen, Lawrence & Co., assignors herein, but that as to all loans held by the said Bank, which have been guaranteed by the said Crippen, Lawrence & Co., as aforesaid, said guaranties shall continue to the same extent as originally expressed, without diminution or enlargement.

And it is further ordered and directed, that all costs and expenses of handling and managing said properties, and of administering said trust, including the fair and reasonable compensation of said trustee, shall be provided for by the said Bank, to be paid out of

funds realized out of said properties, and that the matter of the administration of said trust shall at all times be subject to the intervention and control of this Court, and that statements and reports of said administration may be required by this Court, from time to time, and finally, that final settlement and adjustment of said matters shall be made with the said assignee, or his successors or assigns, under the direction of this Court.

By the Court:

GEO. W. ALLEN,
Judge.

Dated Jany. 28, 1895.

97 STATE OF COLORADO,
City and County of Denver, ss:

I, J. Sherman Brown, Clerk of the District Court of the City and County of Denver, State aforesaid, do hereby certify the above and foregoing to be a true, complete and perfect transcript and copy of Order of Court had and entered of record in a certain cause in said Court lately depending wherein in re The General Assignment of Joseph J. Crippen et al., Co-partners as Crippen, Lawrence & Co., etc., as the same now remains on file and of record in this office.

Witness my hand and seal of said Court, at the Court House in Denver, County and State aforesaid, this 11th day of June, A. D. 1918.

[SEAL.]

J. SHERMAN BROWN,
Clerk.

H. W. PROUTY,
Deputy Clerk.

(Endorsed: No. —. Order appointing J. J. Crippen Trustee, and directing Putnam to turn property over to him. District Court City and County of Denver, Denver, Colo. J. Sherman Brown, Clerk.)

EXHIBIT 39.

District Court, City and County of Denver (formerly Arapahoe County), Second Judicial District.

STATE OF COLORADO,
City and County of Denver, ss:

(Formerly Arapahoe Co.)

Pleas in the District Court of the City and County of Denver (formerly Arapahoe County), State of Colorado, in the fourth division thereof, before the Hon. George W. Allen, one of the judges of the Second Judicial District of the said State, at a term thereof begun and held at the court-house in Denver, in said county, on the second Tuesday (it being the Eighth day) of September, A. D. one thousand eight hundred ninety-six.

Present:

Hon. George W. Allen, one of the Judges of the District Court.
Greeley W. Whitford, Esq., District Attorney of said District.
Elias H. Webb, Esq., Sheriff of said County.
G. S. Richards, Esq., Clerk of said Court.

Be it Remembered, that heretofore and on to-wit the 19th
98 day of February, A. D., 1896, the same being one of the regular judicial days of the January Term, 1896, of said court, the following proceedings, inter alia, were had and entered of record in said court, to-wit:

No. 19938.

In the Matter of the General Assignment of JOSEPH J. CRIPPEN et al., Co-partners as Crippen, Lawrence & Co., to Stephen H. Standart for the Benefit of Creditors.

The matter above entitled coming on to be heard upon the verified report of Stephen H. Standart, the Assignee herein, respecting his acts and proceedings had pursuant to the order of this Court herein made and entered on the 22nd day of January, A. D. 1896, directing sale by said Assignee of all of the assets of the firm of Crippen, Lawrence & Company remaining in his hands as Assignee herein, the said Assignee appearing in person and by George L. Hodges, his attorney, and the creditors heretofore petitioning for sale of said assets also appearing by Harper M. Orahood, their attorney; and it appearing to the Court from the said report of the said Assignee, that, on Monday, the 17th day of February, A. D., 1896, the said assignee offered for sale and sold at public sale, all of the said assets and that the said order of this Court with respect to the manner of advertising

and making said sale was, in all respects, complied with, and that The New Hampshire Real Estate Company was the highest and best bidder at said sale, for all of the property, assets and rights of every kind and description of said firm of Crippen, Lawrence & Company, at the time of said sale remaining in the hands of said assignee, and that the said The New Hampshire Real Estate Company bid therefor, and paid over to the said assignee in cash, the sum of Thirty-seven Thousand and Fifty Dollars ($37,050.00), for which sum and price the said Assignee sold the said assets to the said The New Hampshire Real Estate Company; subject to the right of said Assignee by him reserved, to retain the use of the office furniture, safe and books which it may be necessary for him to retain, until the final closing of the business and trust herein, and accepted from the said Company the deposit of said sum of Thirty-seven Thousand and Fifty Dollars ($37,050.00), subject to the approval of this Court; and it appearing that the said sale was in all respects regular and in due conformity to law and to the said order of this Court in the premises, and that the price obtained for said assets at said sale was greater than the minimum price fixed by said order of sale, and the Court being now sufficiently advised in the premises:

99 It is, therefore, ordered, adjudged and decreed, that the said sale so made by the said Assignee on the 17th day of February, A. D. 1896, to The New Hampshire Real Estate Company, of all of the property, assets and rights of every kind and description of the firm of Crippen, Lawrence & Company, the assignors herein, subject only to the right reserved to said Assignee to retain the use of the office furniture, sale and books which it may be necessary for him to retain until the final closing of the business and trust herein, for the sum of Thirty-seven Thousand and Fifty Dollars ($37,050.00) cash in hand paid to the said Stephen H. Standart, Assignee herein, be and the same is hereby in all respects approved and confirmed, and pursuant thereto, the said Stephen H. Standart is hereby authorized, empowered and directed to make, execute and deliver to said The New Hampshire Real Estate Company such conveyances and evidences of title as shall be necessary and effectual to transfer to and vest in the said Company, all of the right, title and interest of the said Assignee of, in and to the said property, assets and rights, which were in his hands remaining at the time said sale was so made as aforesaid.

By the court.

GEORGE W. ALLEN,
Judge.

Dated Feb. 19th, 1896.

STATE OF COLORADO,
City and County of Denver, ss:

I, J. Sherman Brown, Clerk of the District Court of the City and County of Denver, State aforesaid, do hereby certify the above and foregoing to be a true, complete and perfect transcript and copy of Order of Court approving sale of assets of said Assigned Estate to

The New Hampshire Real Estate Co., had and entered of record in a certain cause in said Court lately depending wherein In re The General Assignment of Joseph J. Crippen et al., co-partners as Crippen, Lawrence & Co., to Stephen H. Standart, for the benefit of creditors, as the same now remains on file and of record in this office.

Witness my hand and seal of said Court, at the Court House in Denver, County and State Aforesaid, this 10th day of June, A. D., 1918.

[SEAL.] J. SHERMAN BROWN,
Clerk.

H. W. PROUTY,
Deputy Clerk.

(Endorsed: No. 19938: In re General Assignment of Joseph J. Crippen et al., Plaintiff vs. —— ——, Defendant. Order of Court, approving sale of assets of said Assigned Estate of The New
100 Hampshire Real Estate Co., District Court, City and County of Denver, Denver, Colo. J. Sherman Brown, Clerk.)

By Mr. Jones: The identification of the following exhibits are waived.

I now offer Exhibit No. 40, which is a quit claim deed from Harry L. Stanley and wife to C. R. Nuttle.

And Exhibit No. 41, a quit claim deed from Edward G. Laying and wife to C. R. Nuttle.

And I offer also Exhibit No. 42 and Exhibit No. 43, being quit claim deeds from H. J. Putnam and wife to Nuttle, and Putnam and wife to Nuttle.

By Mr. Yankey: We object to the introduction of these exhibits for the reason that they are immeterial in the controversy before the court, and they do not tend to, or do not rectify the title in respect to the matters complained of.

By the Court: Well, you know it is impossible for the court to tell. I don't see how the Court is going to keep in mind all the specific objections made at this time or determine precisely what it will do. I will allow them to go in and determine that later on.

By Mr. Yankey: Except.

(Exhibits Nos. 40, 41, 42, and 43, above referred to offered and received in evidence, are, as follows:)

EXHIBIT 40.

Quit Claim Deed.

This Indenture, Made this 21st day of June, in the year of our Lord, one thousand nine hundred eighteen, between Harry L. Stanley and Marie A. Stanley, husband and wife, of Lowell, in the county of Middlesex and State of Massachusetts, of the first part, and C. R. Nuttle of Butler County, Kansas, of the second part.

Witnesseth, That the said parties of the first part, for and in consideration of the sum of One Dollars, to them duly paid, have sold, and by these presents do remise, release and quit-claim
101 unto the said party of the second part, his heirs and assigns, forever, all that tract or parcel of land situated in the county of Butler and State of Kansas, and described as follows, to-wit: Lots One (1) and Two (2), and the East Half (½) of the Northwest Quarter (¼) of Section Thirty-one (31), Township Twenty-six (26), Range Five (5), East of the Sixth (6th) Principal Meridian with all the appurtenances, and all the estate, title and interest of the said parties of the first part therein to have and to hold all and singular; the above described premises, together with the appurtenances, unto the said party of the second part, his heirs and assigns, forever.

The parties of the first part covenant that at the date hereof they executed no conveyance or other instrument of writing whatsoever affecting the said real estate, which does not now appear of record in the office of the Register of Deeds of said County and State.

In witness whereof, the said parties of the first part have hereunto set their hands and seals the day and year above written.

Signed, Sealed and delivered in the presence of

____ ____.

____ ____.

HARRY L. STANLEY. [SEAL.]
MARIE A. STANLEY. [SEAL.]

(Fifty cent U. S. I. R. Documentary Stamp, cancelled June 21, 1918.)

THE STATE OF MASSACHUSETTS,
County of Middlesex, ss:

Be it remembered, That on this 21st day of June, A. D., 1918, before me, John A. Osgood, a Justice of the Peace in and for the said County and State came Harry L. Stanley and Marie A. Stanley, husband and wife, to me personally known to be the same persons who executed the foregoing instrument and duly acknowledged the execution of the same.

In Witness Whereof, I have hereunto subscribed my name and affixed my official seal on the day and year last above written.

JOHN A. OSGOOD,
Notary Public.

My Commission expires Feb. 21st, 1919.

102 EXHIBIT 41.

Quit Claim Deed.

This indenture, made this 26th day of June, in the year of our Lord, One Thousand Nine Hundred and Eighteen, between Edward G. Laying and Leila J. Laying, his wife, of Short Hills in the

County of Essex and State of New Jersey, of the first part, and C. Nuttle of Butler County, Kansas, of the second part.

Witnesseth, That the said parties of the first part, in considerat of the sum of One Dollars, to them duly paid, the receipt of wh is hereby acknowledged, have sold and by the- presents do rem release and quit claim unto the said party of the second part, heirs and assigns, all that tract or parcel of land situated in County of Butler and State of Kansas described as follows, to-wit

Lots one and two and East Half of the Northwest Quarter of S tion 31, Township 26, Range 5 East with all the appurtenances, all the estate, title and interest of the said parties of the first p herein, to have and to hold all and singular the above descri premises, together with the appurtenances, unto the said party the second part, his heirs and assigns, forever.

In witness whereof, the said parties of the first part have he unto set their hand the day and year first above written.

EDWARD G. LAYING. [SEAL.]
LEILA J. LAYING. [SEAL.]

Signed, sealed and delivered in presence of

H. J. PUTNAM.

(Fifty cent U. S. I. R. Documentary Stamp. Cancelled June 1918.)

STATE OF NEW YORK,
County of New York, ss:

Be it Remembered, That on this 26th day of June, A. D., 19 before me a Notary Public in and for said County and State ca Edward G. Laying and Leila J. Laying, his wife, to me persons known to be the same persons who executed the foregoing inst ment, and duly acknowledged the execution of the same.

103 In witness whereof, I have hereunto set my hand affixed my official seal on the day and year last above writt

[SEAL.] GEORGE W. M. RHODES,
Notary Public

County Clerk No. 30.
Registry No. 10099.

My Commission expires March 30, 1920.

EXHIBIT 42.

Deed, Quitclaim.

This Indenture, Made this 18th day of June, 1918, between H Putnam and Lillian S. Putnam, his wife of Merrimack County, the State of New Hampshire, of the first part, and C. R. Nuttle, Butler County, in the State of Kansas, of the second part,

COPY BOUND CL

Witnesseth, That said parties of the first part, in consideration of he sum of One Dollar and no-100 Dollars, the receipt of which is ereby acknowledged, do by these presents, remise, release and quit laim, unto said party of the second part, his heirs and assigns, all he following-described real estate, situated in the County of Butler nd State of Kansas. to-wit: The East Half (E. ½) of Northwest uarter (N. W. ¼) and Lots 1 and 2 of Section Thirty-one (Sec. 1) Township Twenty-six (26), South, Range Five (5) East, con-aining One Hundred and Sixty Acres, more or less.

To have and to hold the same, together with all and singular the nements, heridataments and appurtenances thereunto belonging, r in any wise appertaining, forever.

In witness whereof, the said parties of the first part have hereunto et their hands, the day and year first above written.

H. J. PUTNAM.
LILLIAN S. PUTNAM.

Executed and delivered in presence of
ISABEL F. ABBOTT.

(Fifty cent U. S. I. R. Documentary Stamp. Cancelled June 18, 918.)

TATE OF NEW HAMPSHIRE,
Merrimack County, ss:

Be it remembered, that on this 18th day of June, A. D., 1918, efore me, the undersigned, a Notary Public in and for the County and State aforesaid, came H. J. Putnam and Lillian S. Put-04 nam, his wife, who are personally known to me to be the same persons who executed the within instrument of writing, nd such persons duly acknowledged the execution of the same.

In testimony whereof, I have hereunto set my hand and affixed y notarial seal, the day and year last above written.

[SEAL.] PETER SANBORN,
Notary Public.

(Term expires September 28, 1922.)

EXHIBIT 43.

Deed, Quitclaim.

This indenture, made this 6th day of June, 1918, between J. E. utnam and Emily M. Putnam, his wife of Saline County, in the tate of Kansas, of the first part, and C. R. Nuttle of Butler County, the State of Kansas of the second part.

Witnesseth, that said parties of the first part, in consideration of he sum of One and no-100 Dollars, the receipt of which is hereby

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acknowledged, do by these presents remise, release and quit cl
unto said party of the second part, his heirs and assigns, all the
lowing-described real estate, situated in the County of Butler
State of Kansas, to-wit: E. ½ of N. W. ¼ and Lots One (1)
Two (2) of Section 31, Township 26 South, Range 5 East.

To have and to hold the same, together with all and singular
tenements, hereditaments and appurtenances thereunto belong
or in any wise appertaining, forever.

In witness whereof, The said parties of the first part have h
unto set their hands, the day and year first above written.

J. E. PUTNAM.
EMILY M. PUTNAM

Executed and delivered in presence of

____ ____.

____ ____.

(Fifty Cent U. S. I. R. Documentary Stamp canceled 6-6-1

STATE OF KANSAS,
Saline County, ss:

Be it remembered, that on this 6th day of June, A. D. 19
before me, the undersigned, a Notary Public in and for the Cou
and State aforesaid, came J. E. Putnam and Emily M. Putnam,
wife, who are personally known to me to be the same per
105 who executed the within instrument of writing, and s
person they duly acknowledged the execution of the sa

In testimony whereof, I have hereunto set my hand and aff
my Notarial seal the day and year last above written.

WILBUR S. FREY,
[SEAL.] *Notary Publi*

(Term expires January 9, 1922.)

By Mr. Jones: I now offer Exhibit No. 44; that is an affid
of H. J. Putnam in regard to the death and heirship of the mem
of the firm of Crippen, Lawrence and Company.

I offer Exhibit No. 45; that is an affidavit of Peter Sanborn
the same lines as the affidavit of H. J. Putnam.

Exhibit No. 46 is an attest copy of the Register of the Pro
Court of Merrimack County, New Hampshire, showing the
dence and estates of the heirs of Henry J. Crippen, deceased.

By Mr. Yankey: Offer that separately from the other, if you

By Mr. Jones: I will withdraw that offer; and I offer Exhibit
47, which is an affidavit of J. E. Putnam in regard to the
bers of the firm, and the death and heirship of the members o
firm of Crippen, Lawrence and Company.

By Mr. Yankey: Plaintiff objects to this affidavit appearing
the exhibit just offered, but waives the identification of the in
ment; and objects for the reason that they are immaterial and i

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t, and have no bearing upon any issue in this case, and do not
l to rectify the title as complained of, and are for that reason
naterial; and do not furnish such title as was required under the
tract between the parties.

By the Court: The court is going to allow them to go in and con-
r their effect later on.

By Mr. Yankey: Plaintiff excepts.

By Mr. Jones: I now offer Exhibit No. 46, which is the certificate
the probate court of Merrimack County, N. H., showing the
th and heirship of Henry J. Crippen, deceased.

By Mr. Yankey: Plaintiff has no objection to the identification
the instrument, but objects for the reason it is irrelevant and im-
terial, and does not tend to prove any issue in the case, or tend
correct or support the title in accordance with the requirements of
s contract.

By the Court: Let it go in.

By Mr. Yankey: Plaintiff excepts.

(Exhibits Nos. 44, 45, 46, 47, above referred to, offered and re-
ved in evidence are as follows:)

EXHIBIT 44.

(Copy.)

ATE OF NEW HAMPSHIRE,
County of Merrimack, ss:

H. J. Putnam, being first duly sworn, upon his oath states, he is a
son of legal age, a resident of Concord, New Hampshire. That he
s a member of the partnership known as Crippen, Lawrence &
mpany, which was engaged in the farm loan business in the state
Kansas and other states; that said partnership was composed of
ee persons, whose names are as follows, to-wit: J. J. Crippen, H.
Crippen and H. J. Putnam.

That J. J. Crippen is dead, having died during the year 1917, and
surviving him as his sole and only heirs H. Frances Crippen,
widow; H. S. Crippen and J. S. Crippen, sons, and Helen D.
ippen, daughter; that H. J. Crippen is dead, having died in
cember, 1893; that he left surviving him as his sole heirs Susan
Crippen, his wife, who died during the year 1906, and Mrs. Leila
Layng and Mrs. Marie A. Stanley, daughters.

That this affiant is a nephew of J. J. Crippen and H. J. Crippen,
d was, prior to their death, associated with them in business for
umber of years. Further the affiant sayeth not.

[SEAL.] H. J. PUTNAM.

Subscribed and sworn to before me this 19th day of June, 1918.

PETER SANBORN,
Notary Public.

My commission expires Sept. 28, 1922.

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(Endorsed: Copy of Affidavit of H. J. Putnam, heirs of H. Crippen.)

EXHIBIT 45.

STATE OF NEW HAMPSHIRE,
County of Merrimack, ss:

Peter Sanborn, being first duly sworn, upon his oath says h a person of legal age, a resident of Concord, New Hampshire.

That he was well acquainted with the members of the partners doing business under the name of Crippen, Lawrence & C
107 pany; that said partnership was composed of the follow named persons, to-wit: J. J. Crippen, H. J. Crippen and J. Putnam; that this affiant is brother of Susan J. Crippen deceas who was the wife of H. J. Crippen; that this affiant was associa with said partnership in their business, as a clerk, and was acquainted with the business affairs of said company.

This affiant also was well acquainted with the family affairs the Crippens, and that the said J. J. Crippen died sometime dur the year 1917, and left surviving him as his sole and only heirs following: H. Frances Crippen, surviving widow; H. D. Cripp and J. S. Crippen, surviving sons and Helen D. Crippen surviv daughter; that H. J. Crippen died in December 1893 and left viving him as his sole and only heirs, the following: Susan J. C pen, surviving wife, who died sometime during the year 1906, Mrs. Lelia J. Layng, who is the wife of Edward G. Layng, and Marie A. Stanley, who is the wife of Harry L. Stanley, daugh of said deceased.

Further the affiant sayeth not.

PETER SANBORN.

Subscribed and sworn to before me this 19th day of June, 19

FRED N. LADD,
[SEAL.] *Notary Public.*

My commission expires Mch. 17, 1919.

(Endorsed: Copy of Aff. Peter Sanborn, heirs of H. J. Cripp *died.*)

EXHIBIT 46.

(Copy.)

STATE OF NEW HAMPSHIRE,
Merrimack County:

Names and residence of Heirs in the Estate of Henry J. Cripp late of Concord in said County, who deceased on the 26th day Dec. A. D. 1893:

COPY BOUND C

Names of heirs.	Relationship to deceased.	Residence.
san J. Crippen	Widow	Concord, N. H.
ila Layng	Daughter	Short Hills, N. J.
arie Stanley	Daughter	Lowell, Mass.

Dated at Concord this 25th day of January 1897.

o the Register of Probate for the County of Merrimack:

08 I certify the foregoing statement is to the best of my knowledge and belief true.

ANSON S. MARSHALL,
Administrator Henry J. Crippen Est.

true Copy—Attest:
J. EUGENE KEELER,
Register.

Concord, N. H., June 18, 1918.

(Endorsed: Copy Certificate Probate Court, heirs of H. J. Crippen.)

EXHIBIT 47.

Affidavit.

J. E. Putnam, of lawful age, deposes and says he was well acquainted with the business and affairs of Crippen-Lawrence & Company from 1887 to date of dissolution of said firm, September 18, 1893, at which time assignment was made to Stephen H. Standart, assignee, of Denver, Colorado; that he acted as agent for said assignee, looking after the business of the estate in Kansas until discharge of said assignee about 1896 or 1897.

That affiant was well acquainted with the affairs of Crippen-Lawrence & Company and the individual members of said firm, who consisted of the following:

H. J. Crippen of Concord, New Hampshire, Joseph J. Crippen of Denver, Colorado, and H. Putnam of Salina, Kansas. That H. J. Crippen died in December, 1893, leaving as his heirs at law, his wife, Susan J. Crippen (who died a few years later), two daughters, Lela J. Layng of Short Hill, New Jersey, who intermarried with Edward J. Layng and Marie A. Stanley, who intermarried with Harry A. Stanley, of Lowell, Massachusetts.

J. J. Crippen died in Denver, Colorado, about November, 1917, leaving as his heirs at law, H. F. Crippen, his wife, No. 1135 Logan Avenue, H. D. Crippen, son, whose present address is Denver, Colorado, Joseph J. Crippen, Jr., son, whose present address is unknown to affiant and Helen Crippen, daughter, No. 1135 Logan Avenue.

H. J. Putnam's present address is Concord, New Hampshire.

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That in connection with the affairs of Crippen-Lawrence & Co
pany a corporation was formed under the name of The New Ham
shire Real Estate Company for the purpose of acquiring and liq
dating assets of said firm composed entirely of creditors of su
Company, of which approximately 97 per cent of credito
109 were represented, who entered into and acquiesced in the
tions of said corporation and participated in the distributi
of the property and assets of said estate. That the assets of Cripp
Lawrence & Company were sold at trustee sale about Februar
1896, to The New Hampshire Real Estate Company.

That said affiant acquired the record title to The East Half (
½) of the Northwest Quarter (N. W. ¼) and Lots One (1) an
Two (2) in Section Thirty-One (31), Township Twenty-Six (26
Range Five (5) East in Butler County, Kansas, by sheriff's de
dated March 20, 1893, acting in the capacity of trustee for the fir
of Crippen-Lawrence & Company. Later on September 21, 189
he conveyed said property to Stephen H. Standart, assignee of Cri
pen-Lawrence & Company and at the time of this conveyance affia
was single and unmarried.

And further deponent saith not.

J. E. PUTNAM.

STATE OF KANSAS,
Saline County, ss:

Subscribed and sworn to before me this 6th day of June, 1918.
[SEAL.] WILBUR S. FREY,
Notary Public.

My commission expires Jan. 9th, 1922.

By Mr. Jones: I now offer Exhibits Nos. 48 and 49, the ident
fication of which is waived, the same being assignments—the sam
being the original assignments placed in the bank conveying th
property in compliance with the contract.

By Mr. Yankey: Are they the ones placed there originally?

By the Court: The ones placed with the escrow paper?

By Mr. Yankey: Well, they are dated the 18th of June, that
the reason I am inquiring, Mr. Jones. Mr. Jones, these instr
ments were dated the 18th of June; some of them the 25th of Jun
that is the reason why I am objecting to them.

By the Court: Well, the escrow was placed on the 26th day
May, at least deposited there before the time of making the title ha
expired.

By Mr. Jones: At any rate they are the ones furnished me as bein
the original instruments that were placed with the contract in th
bank.

By Mr. Yankey: I have no objection to the introduction of the in
strument; the matter I was objecting to was your conclusion the
were placed at the time of the execution of the original instrumen
because of the variance of the dates.

COPY BOUND C

By Mr. Jones: I may be wrong as to that; I have no information as to when they were placed there; but these are the instruments that were placed in the bank.

By Mr. Yankey: Well, it is admitted they weren't put there at the time of the execution of the original contract.

By the Court: The assignments do not appear from this escrow writing to have been included, just the contract and the draft.

By Mr. Yankey: The contract itself recited the assignments were executed with the contract and placed in the bank.

(Exhibits Nos. 48 and 49, above referred to, offered and received in evidence, are, as follows:)

EXHIBIT 48.

Assignment of Oil and Gas Lease.

Know all men by these presents:

That Whereas, the undersigned, John H. Keith, C. M. Ball, Isador Litman, P. G. Keith and Atlas Petroleum Company, a corporation duly organized and existing under the laws of the State of Oklahoma, are now, severally, the owners and holders of undivided interests in and to the leasehold estate in and to the following described real estate, situated in the County of Butler and State of Kansas, to-wit: The northeast quarter of Section thirty-one (31), in Township twenty-six (26), of Range five (5), created and existing under and by virtue of the certain Oil and Gas Mining lease bearing date December 16, 1915, made and entered into by and between C. R. Nuttle and Ora T. Nuttle, his wife, of said Butler County, Kansas, as lessors, and said John H. Keith as lessee, which lease was duly filed for record in the office of the Register of Deeds of said Butler County, Kansas, on the 17th day of December, 1915, and duly recorded in Book Misc. L. of Deeds, at page 195, and by which lease the above described land, together with other lands therein described, were granted, demised, leased and let by said lessors to said lessee; and whereas, by virtue of assignments duly made and executed subsequent to the making of said lease as aforesaid, the undersigned have become and now are, severally as aforesaid, the owners and holders of undivided interests comprising the whole of the leasehold rights and interest of the said John H. Keith, under said lease in and to the tract of land hereinabove described;

Now, therefore, In consideration of the sum of One Dollar and other valuable consideration, the receipt whereof is hereby acknowledged, we the undersigned, John H. Keith, C. M. Ball, Isador
111 Litman, P. G. Keith and Atlas Petroleum Company, a corporation duly organized and existing under the laws of the State of Oklahoma, do now hereby sell, assign, transfer and set over unto The Liberty Oil Company, a corporation organized and existing under the laws of the State of Virginia, all and singular the leasehold estate, right, title and interest created by and under the certain

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oil and gas lease hereinabove mentioned and described, in and to, and only in and to, the said tract of land hereinabove described, situated in said County of Butler and State of Kansas, to-wit: The northeast quarter of Section thirty-one (31), in Township twenty-six (26), of Range five (5), with all rights, powers and privileges accrued and accruing to us and any and either of us under and by virtue of the terms and provisions of the said lease.

To have and to hold The same unto said The Liberty Oil Company, its successors and assigns, upon and according to the terms and conditions of the said lease, all of which said The Liberty Oil Company now covenants and agrees to perform and comply with; together with all the pipes, tubings, derricks, boilers, engines, tools and oil and gas well equipment now on the said tract of land, excepting, however, one string of casing, consisting of 17-lb. 5 3-16 in. casing, belonging to the National Refining Company, and excepting also the oil engines placed on said land by the undersigned since April 14, 1918; and also together with and included in this assignment and transfer, the full undivided one-fourth interest owned by the undersigned in a water pumping plant located on the Warren E. Brown farm in said county, and the full undivided one-half interest owned by the undersigned in the water pipe line connecting said plant with said tract of land.

The undercigned hereby covenant and agree that they are the lawful owners and holders of the said Oil and Gas Mining lease, and all rights, powers and privileges thereunder in respect of the land hereinabove described, that the same is free and clear of any and all incumbrances and liens of every nature, and that they have good right and title to sell and assign the same; it being distinctly understood and agreed that this assignment is made only in respect of the land hereinabove described, and shall not in any manner or circumstances be construed to affect in any way the leasehold or other rights of the undersigned or either or any of them in and to any lands mentioned in said Oil and Gas Mining lease other than the tract of land hereinabove specifically described.

In witness whereof, We have hereunto set our hands and seals this 18th day of June, 1918.

JOHN H. KEITH.
C. M. BALL.
112 ISADOR LITMAN.
P. G. KEITH.
ATLAS PETROLEUM CO.,
By JOHN J. McPHERSON,
President.

Attest:
[SEAL.] B. W. BUSH.

STATE OF KANSAS,
County of Montgomery, ss:

On this 25th day of June, 1918, before me a Notary Public in and for the said County and State, personally appeared John H. Keith, C. M. Ball, Isador Litman and P. G. Keith, to me personally known

to be the identical persons who executed the within and foregoing instrument and such persons duly acknowledged to me that they executed the same as their free and voluntary act and deed.

In testimony whereof, I have hereunto set my hand and affixed my notarial seal the day and year last hereinabove written.

[SEAL.] E. M. TODD,
Notary Public, Montgomery County, Kansas.

My Commission expires Jan. 18, 1919.

STATE OF MISSOURI,
County of Jackson, ss:

On this 18th day of June, 1918, before me, a Notary Public in and for the County and State aforesaid, appeared John J. McPherson, to me personally known, and who being by me duly sworn did say that he is President of Atlas Petroleum Company, a corporation, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and said John J. McPherson acknowledged said instrument to be the free act and deed of said corporation.

In testimony whereof, I have hereunto set my hand and affixed my notarial seal at my office in Kansas City, Missouri, the day and year last hereinabove written.

[SEAL.] AMY BELLE TURNER,
Notary Public, Jackson County, Missouri.

My commission expires Feby. 3, 1920.

(In margin: Liberty Oil Co. assignment.)

113 EXHIBIT 49.

Assignment of Oil and Gas Lease.

Know all men by these presents:

That Whereas, the undersigned, John H. Keith, C. M. Ball, Isador Litman, P. G. Keith and Atlas Pe-roleum Company, a corporation duly organized and existing under the laws of the State of Oklahoma, are now, severally, the owners and holders of undivided interests in and to the leasehold estate in and to the following described real estate situated in the County of Butler and State of Kansas, to-wit: The south half of Lot one (1), Lot two (2), and the southeast quarter of the northwest quarter, otherwise described as the south half of the northwest quarter of the northwest quarter, and the south half of the northwest quarter, all in Section thirty-one (31), Township twenty-six (26), Range five (5), and containing one hundred acres, more or less, created and existing under and by virtue of the certain Oil and Gas Mining lease bearing date August 29, 1917, made and entered into by and between C. R. Nuttle and

Ora T. Nuttle, his wife, of Butler County, Kansas, as lessors, and said John H. Keith and John J. McPherson as lessees, which lease was duly filed for record in the office of the Register of Deeds of said Butler County, Kansas, on the 3rd day of September, 1917, and duly recorded in Book 29, Page 463, and by which lease the above described lands were granted, demised, leased and let by said lessors to said lessees; and whereas, by virtue of assignments duly made and executed subsequent to the making of said lease as aforesaid, the undersigned have become and now are, severally as aforesaid, owners and holders of undivided interests comprising the whole of the leasehold rights and interests of the said John H. Keith and John J. McPherson under said lease in and to the lands hereinabove described;

Now, therefore, In consideration of the sum of One dollar and other valuable consideration, the receipt whereof is hereby acknowledged, we the undersigned, John H. Keith, C. M. Ball, Isador Litman, P. G. Keith and Atlas Petroleum Company, a corporation duly organized and existing under the laws of the State of Oklahoma, do now hereby sell, assign, transfer, and set over unto The Liberty Oil Company, a corporation organized and existing under the laws of the State of Virginia, all and singular the leasehold estate, right, title, and interest created by and under the certain Oil and Gas lease hereinabove mentioned and described, in and to, and only in and to, the said tracts of land hereinabove described, situated in said County of Butler and State of Kansas, to-wit: The South half of Lot one (1), Lot Two (2), and the southeast quarter of the northwest quarter, otherwise described as the south half of the north-
114 west quarter of the northwest quarter, and the south half of the northwest quarter, all in Section thirty-one (31), Township twenty-six (26), Range five (5), and containing one hundred acres more or less, with all rights, powers and privileges accrued and accruing to us and any and either of us under and by virtue of the terms and provisions of the said lease.

To have and to hold The same unto said The Liberty Oil Company, its successors and assigns, upon and according to the terms and conditions of the said lease, all of which said The Liberty Oil Company now convenants and agrees to perform and comply with; together with all the pipes, tubings, derricks, boilers, engines, tools and oil and gas well equipment now on the said tracts of land, excepting, however, one string of casing, consisting of 17-lb 5 3-16 in. casing belonging to The National Refining Company, and excepting also the oil engines placed on said land by the undersigned since April 14, 1918; and also together with and included in this assignment and transfer, the full undivided one-fourth interest owned by the undersigned in a water pumping plant located on the Warren E. Brown farm in said county, and the full undivided one-half interest owned by the undersigned in the water pipe line connecting said plant with said tracts of land.

The undersigned hereby covenant and agree that they are the lawful owners and holders of the said Oil and Gas Mining lease, and of all rights, powers and privileges thereunder in respect of the

land hereinabove described, that the same is free and clear of any and all incumbrances and liens of every nature, and that they have good right and title to sell and assign the same.

In witness whereof, We have hereunto set our hands and seals this 18th day of June, 1918.

JOHN H. KEITH,
C. M. BALL,
ISADOR LITMAN,
P. G. KEITH,
ATLAS PETROLEUM CO.,
By JOHN J. McPHERSON,
President.

Attest:
[SEAL.] B. W. BUSH.

STATE OF KANSAS,
County of Montgomery, ss:

On this 25th day of June, 1918, before me a Notary Public in and for the said County and State, personally appeared John H. Keith, C. M. Ball, Isador Litman and P. G. Keith, to me personally known to be the identical persons who executed the within and foregoing instrument and such persons duly acknowledged to me that they executed the same as their free and voluntary act and deed.

115 In testimony whereof, I have hereunto set my hand and affixed my notarial seal the day and year last herein above written.

[SEAL.] E. M. TODD,
Notary Public, Montgomery County, Kansas.

My Commission expires Jan. 18, 1919.

STATE OF MISSOURI,
County of Jackson, ss:

On this 18th day of June, 1918, before me, a Notary Public in and for the County and State aforesaid, appeared John J. McPherson, to me personally known, and who being by me duly sworn did say that he is the President of Atlas Petroleum Company, a corporation, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and said John J. McPherson acknowledged said instrument to be the free act and deed of said corporation.

In Testimony Wher-of, I have hereunto set my hand and affixed my notarial seal at my office in Kansas City, Missouri, the day and year last hereinabove written.

[SEAL.] AMY BELLE TURNER,
Notary Public, Jackson County, Missouri.

My Commission expires Feby. 3, 1920.

(In margin: Liberty Oil Co. assignment).

J. H. KEITH, called as witness on behalf of the defendants, having been first duly sworn, testifies, as follows:

Direct examination.

Questions by Mr. Jones:

Q. Mr. Keith, where do you reside? Are you the J. H. Keith, one of the defendants in this case?

A. Yes sir.

Q. I hand you Exhibit No. 50; I will ask you if that is Mr. C. R. Nuttle's signature?

A. Yes sir.

Q. Mr. Keith, did you ever show that Exhibit No. 50 to the Liberty Oil Company or its attorneys?

A. Did I turn it over to them?

Q. Did you ever show it to them?

116 A. I don't recall I ever did.

Q. What is the fact as to whether or not you told them you had it?

A. I told Mr. Burdett I had certificate from Mr. Nuttle we had complied with the lease.

Q. Is number 50 the certificate you had?

A. Yes.

By Mr. Yankey: There is no dispute about that.

By Mr. Jones: There is no dispute about that?

By Mr. Yankey: No.

By Mr. Jones: How about Number 51?

It is admitted in the record that Exhibit No. 50 and Exhibit No. 51, were shown to the plaintiff in this case, or their counsel, prior to the time the title was finally refused.

Q. Mr. Keith, one of the objections, as I understand it, to the title in controversy was as to whether or not the title of C. R. Nuttle to the land was a good title? State what is the fact as to whether or not you secured an affidavit relative to that title?

By Mr. Hammond: We object to that your Honor unless he got them within the thirty days.

By Mr. Jones: I am getting up to that.

By the Court: Answer.

A. I did.

Q. Now, Mr. Keith, I hand you Exhibits 52, 53, 54, and ask you if those are the affidavits you secured with reference to that title?

A. They are. I want to say just this, Mr. Jones. I didn't personally—I was not present when these were sworn to.

Q. But those are the affidavits you obtained?

A. Yes.

Q. But after you obtained them what did you do with these affidavits?

A. I kept them.

Q. Did you ever tell the plaintiff in the case, or their counsel, that you had these affidavits for their use?

A. Well, I had a conversation I think with Mr. Yankey about that and I either told Mr. Yankey I had them at that time
117 or would procure them, if I recollect correctly.

Q. Did you after——

A. The contention was with me, that is, I was contending with Mr. Yankey that the statute of limitations had run on any claims anybody else had, if they ever had any; and I either had those at that time or told him I would procure them.

Q. You never showed them to Mr. Yankey?

A. I don't think so. If I ever did I don't recollect it. Mr. Yankey will know but I don't have any recollection of having shown them.

By Mr. Jones: I now offer in evidence exhibits Nos. 50, 51, 52, 53 and 54.

By Mr. Yankey: We object to the introduction of Exhibits 52, 3 and 4, and each of them, for the reason that they are immaterial, and irrelevant to this controversy; and for the further reason that they do not tend to prove or disprove such a title as was required by the contract in this controversy; and for the further reason that they were not presented for inspection to the plaintiff or its agents during the time required by the contract.

By the Court: Well, that may be, but in a matter before the court it would at least tend to show diligence; it may do that, or good faith. On that ground I will let them go in.

By Mr. Yankee: Except.

By the Court: As to whether they are material in the end of course I cannot tell.

(Exhibits Nos. 50 to 54, inclusive, above referred to, offered and received in evidence are as follows:)

EXHIBIT 50.

This is to certify That on the 16th day of December, 1915, myself and wife, Ora T. Nuttle, executed to John H. Keith of Coffeyville, Kansas, an oil and gas lease upon the following land in Butler County, Kansas:

The North Half (N. ½) of Section Thirty-one (31), Township Twenty-six (26), Rrange Five (5), and other lands.

which said lease was filed for record in the office of the Register of Deeds of Butler County, Kansas, on the 17th day of December, 1915, and recorded in Book Miscl. of Deeds, at Page 195.

118 This is to further certify That within the time prescribed in said lease for the said drilling, an oil well was drilled upon said lease, in compliance with the terms thereof.

Given under my hand the 22 day of June, 1918.

C. R. NUTTLE.

Witness-:

V. P. MOONEY.
ELLIS DYLING.

EXHIBIT 51.

Receipt.

This is to certify That I have received the sum of One Hundred Dollars ($100.00) for rental on lands embraced in an oil and gas mining lease executed by me on the 29th day of August, 1917, to John H. Keith and John J. McPherson, which land is described as follows, towit:

The South Half (S. ½) of Lot One (1); Lot Two (2); and the Southeast Quarter (S. E. ¼) of the Northwest Quarter (N. W. ¼), otherwise described as the South Half (S. ½) of the Northwest Quarter (N. W. ¼) of the Northwest Quarter (N. W. ¼) and the South Half (S. ½) of the Northwest Quarter (N. W. ¼) of Section Thirty-one (31), Township Twenty-six (26), Range Five (5), in Butler County, Kansas.

the said land being described in the abstract as the

East Half (E. ½) of the Northwest Quarter (N. W. ¼); and the South Half (S. ½) of Lot One (1); and all of Lot Two (2), in said section Thirty-one (31), Township Twenty six (26), Range Five (5),

said rental being the rental due on November 29, 1917, and paying all rental due on said lease to November 29, 1918.

Dated this 22 day of June, 1918.

C. R. NUTTLE.

Witness-:

V. P. MOONEY.
ELLIS DYLING.

EXHIBIT 52.

In re the Title to Lots One (1), and Two (2), and the East Half (½) of the Northwest Quarter (¼) of Section 31, Township 26 South, of Range 5 East of the 6th P. M.

119 *Affidavit.*

STATE OF KANSAS,
Butler County, ss:

C. R. Nuttle being first duly sworn deposes and says:

That he is the owner of the above described real estate; that he and those under whom he claims have been in the open, notorious, absolute and peaceable possession of said land since the year 1896; that he and those under whom he claims, have paid the taxes on said land for each and every year since said time, and that S. H. Standart, Crippen, Lawrence & Company, or J. J. Crippen have neither occupied said land, paid any taxes on it, received any rent therefrom, have never laid any claim to or interest therein, and have never assumed any control over same, and that neither of said parties nor anyone else have ever been in possession thereof except this affiant, and those under whom he derived his title.

C. R. NUTTLE.

Subscribed in my presence and sworn to before me this the 10th day of June, 1918.

[SEAL.] V. P. MOONEY,
Probate Judge, Butler Co., Kans.

My commission expires —— —, 19—.

EXHIBIT 53.

In re the Title to Lots One (1) and Two (2) and the East Half (½) of the Northwest Quarter (¼) of Section 31, Township 26 South, of Range 5 East of the 6th P. M., Butler County, Kansas.

Affidavit.

STATE OF KANSAS,
Butler County, ss:

T. P. Mannion being first duly sworn deposes and says:
That he is acquainted with the above described real estate, and with C. R. Nuttle the owner thereof; that the said C. R. Nuttle and those under whom he claims title to said real estate, have been in the open, notorious, absolute and peaceable possession of said land since the year 1896; that he and those under whom he claims, have paid the taxes on said land for each and every year since said time, and that S. H. Standart, Crippen, Lawrence & Company, or J. J.

Crippen have neither occupied said land, paid any taxes on it, re
ceived any rent therefrom, have never laid any claim to or intere
therein, and have never asumed any control over same, an
120 that neither of said parties nor anyone else have ever been i
possession thereof except said C. R. Nuttle, and those unde
whom he derived his title.

T. P. MANNION.

Subscribed in my presence and sworn to before me this the 10
day of June, 1918.

[SEAL.]

V. P. MOONEY,
Probate Judge, Butler County, Kans.

My commission expires —— —, 19—.

EXHIBIT 54.

In re the Title to Lots One (1) and Two (2) and the East Ha
(½) of the Northwest Quarter (¼) of Section 31, Township 2
South, of Range 5 East of the 6th P. M., Butler County, Kansa

Affidavit.

STATE OF KANSAS,
Butler County, ss:

C. L. King, being first duly sworn, deposes and says:

That he is acquainted with the above described real estate, an
with C. R. Nuttle the owner thereof; that the said C. R. Nuttle an
those under whom he claims title to said real estate, have been i
the open, notorious, absolute and peaceable possession of said land
since the year 1896; that he and those under whom he claims, hav
paid the taxes on said land for each and every year since said time
and that S. H. Standart, Crippen, Lawrence & Company, or J.
Crippen have neither occupied said land, paid any taxes on it, re
ceived any rent therefrom, have never laid any claim to or intere
therein, and have never assumed any control over same, and th
neither of said parties nor anyone else have ever been in possessio
thereof except said C. R. Nuttle, and those under whom he derive
his title.

C. L. KING.

Subscribed in my presence and sworn to before me this the 10
day of June, 1918.

[SEAL.]

V. P. MOONEY,
Butler Co., Kans., Probate Judge.

My commission expires —— —, 19—.

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Cross-examination.

Questions by Mr. Yankey:

121 Q. Mr. Keith, I call your attention to Exhibit No. 55 and ask you if you have seen that before?

A. It looks like my handwriting, Mr. Yankey.

Q. Please examine them so you can say whether or not they were in your possession and the circumstances under which you had them?

A. I wrote that; I also wrote that.

Q. I call your attention to the back of one of the instruments.

A. I don't know that I ever saw that, I didn't write that.

Q. To refresh your recollection Mr. Keith, weren't these papers, Exhibit No. 55, the receipts that were given to you at Wichita at the Eaton hotel at the time you turned over to the Liberty Oil Company and its agents the papers?

A. I assume they were.

Q. That you purported to offer as a completion of the title and abstract as shown by these receipts?

A. They were the papers that were turned over regardless of the purpose of turning them over to you. I wrote that receipt; Atlas Petroleum Company or some of its agents evidently had the papers there because receipt is given to them; it is in my handwriting.

Q. Is this not the receipt signed "Holmes, Yankey and Holmes, and you turned them over to me, and I signed the receipt?

A. Yes, it is all right; you signed that, I reckon, some of you did at any rate. It was received from the Atlas Petroleum Company. But I wrote it.

Q. Calling attention to the date that is on there; is that the date they were turned over and in your handwriting?

A. The date was written in my handwriting, yes, sir.

Q. June 29th?

A. June 29th.

Q. 1918?

A. I assume that is correct.

By Mr. Yankey: As part of the cross examination, I offer Exhibit No. 55, consisting of two papers.

122 Q. I call your attention Mr. Keith to Exhibit No. 23 which purorts to be a letter from Holmes, Yankey & Holmes to you, with a description of the instruments, being fourteen in all, which were sent to you by express with the abstract, and I ask you if you received those instruments as purported to be stated in that?

A. I don't recall that I checked them over; I took your word for the fact they were all there; I assumed they were.

(Witness excused.)

(Exhibit No. 55, above referred to, offered and received in evidence as a part of the cross examination of Mr. Keith, is as follows:)

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EXHIBIT 55.

Eaton Hotel,

Wichita, Kansas.

American Plan.

Horace Humphreys.

Received of Atlas Petroleum Co., et al. the following papers:
Quit-Claim deed from Harry L. Stanley and wife to C. R. Nutt dated June 21, 1918. Acknowledged before John A. Osgood.
Quit-Claim deed from Edward G. Laying and wife of Short Hill N. J. to C. R. Nuttle. Acknowledged before George Wm. Rhod Dated June 26, 1918.
Quit-Claim deed from J. E. Putnam and wife to C. R. Nuttle, Jun 6, 1918. Acknowledged before Wilber S. Frey.
Quit-Claim deed H. J. Putnam and wife to C. R. Nuttle, Jun 18, 1918. Acknowledged by Peter Sansborn.
Certificate, Register Merrimack County, N. H. Showing heirs H. J. Crippen. Affidavit of H. J. Putnam, showing heirs of Cri pen.
Affidavit of Peter Sanborn showing heirs of Crippen & Putnam.
Affidavit of J. E. Putnam.
Abstract N. ½ of Section 31, Township 26, Range 5, Butler Co Kansas.
Certificate District Clerk Denver, Colo., showing no incompet creditors Crippen-Lawrence Co.
Dated June 29, 1918.

HOLMES, YANKEY & HOLMES.

(On back Page 1:)

123 Order appointing J. J. Crippen, Trustee.
Final report of J. J. Crippen, Trustee.
Certificate of appointment of Standard Order, discharging J. Crippen, Trustee.
Final report of Standard Certificate to all property.

HOLMES, YANKEY & HOLMES.

By Mr. Jones: Defendant rests.

Thereupon, the plaintiff, to further sustain the issues upon its pa produced and offered evidence, as follows:

By Mr. Yankey: I offer in evidence Exhibits Nos. 56 and 57 th identification of which is waived, purporting to be certified copies the records and files in the proceedings of the Crippen-Lawrence Company in the Arapahoe Court of Colorado.
By Mr. Jones: The record shows the identity of all of these is ad mitted.

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By Mr. Yankey: I offer in evidence Exhibit Nos. 58 and 59, the identity of which is admitted, which exhibits are copies of assignments made by Henry J. Putnam to Stephen H. Standart for the benefit of his creditors, and copy of assignment of Joseph Crippen to Stephen H. Standart.

(Exhibits Nos. 56, 57, 58 and 59, above referred to, offered and received in evidence, are as follows:)

EXHIBIT 56.

Filed in District Court, Arapahoe Co., Colo., Oct. 14, 1893. Matt A. Adams, Clerk.

STATE OF COLORADO,
Arapahoe County, ss:

In the District Court.

No. 19938.

In the Matter of the Assignment of JOSEPH J. CRIPPEN, HENRY J. CRIPPEN, and HENRY J. PUTNAM, Co-partners as Crippen, 24 Lawrence & Co., to Stephen H. Standart for the Benefit of the Creditors of said Co-partnership.

Comes now Stephen H. Standart, the Assignee in the matter above entitled to whom the said Joseph J. Crippen, Henry J. Crippen and Henry J. Putnam as co-partners under the firm name and style of Crippen, Lawrence & Co., by deed of assignment in writing dated the 8th day of September, A. D., 1893, and which was on that day duly filed for record in the office of the Clerk and Recorder of Arapahoe County, Colorado, in Book 947 at page 196 in said County Records, assigned all of the property of the said co-partnership to the said Stephen H. Standart as assignee for the benefit of all the creditors of the said co-partnership and as such Assignee and in compliance with the law, time having heretofore been given and extended by order of this Court therefore, and respectfully submits the following true and full inventory and valuation under oath as far as the same has come to his knowledge of the estate of the said Crippen, Lawrence & Co., real and personal, to-wit:

Denver, Colorado, October 12, 1892.

Stephen H. Standart,
Assignee of Crippen, Lawrence & Co.,
Denver, Colo.

DEAR SIR:

We herewith submit to you Statement of Assets and Liabilities of Crippen, Lawrence & Co., in compliance with the requirements of Chapter 34, Session Laws of Colorado, 1893.

CRIPPEN, LAWRENCE & CO.,
By HENRY J. PUTNAM,
Partner.

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Butler County.

8008.	J. Pearson ..... Lots 21 and 22, 6-29-8.	1,000	1,000
8529.	M. A. Osborn ..... N. E. 32-28-6.	2,200	1,600
8108.	L. H. Thurman ..... S. W. 28-27-7.	1,000	800
8126.	M. L. Hoffman ..... S. S. E. 11-26-4.	700	600
125			
8166.	B. Folek ..... N. E. 14-26-4.	1,900	1,500
8202.	1 Castell ..... S. W. N. E. S. E. N. W. N. E. S. W. and N. W. S. E. 20-27-8.	1,200	1,000
8381.	B. F. Eagle ..... S. E. 1-26-6.	2,500	1,900
9087.	J. A. Ballard ..... E. S. E. 22-28-3.	1,350	900
8157.	J. M. Turner ..... E. N. W. and lots 1 and 2 31-26-5.	1,400	1,200

STATE OF COLORADO,
Arapahoe County, ss:

In the Matter of the Assignment of JOSEPH J. CRIPPEN, HENRY CRIPPEN, and HENRY J. PUTNAM, as Co-partners under the F Name and Style of Crippen, Lawrence & Co.

Joseph J. Crippen, being first duly sworn, on his oath deposes says that he is the same Joseph J. Crippen, who, as a member the co-partnership of Crippen, Lawrence & Co., on the 18th of September, A. D., 1893, executed and filed for record in the o of the Clerk and Recorder of Arapahoe County, Colorado, a d of general assignment of all of the property and effects of the co-partnership for the benefit of all of its Creditors, to Stephen Standart, as assignee; that in accordance with the provision Section 2 of An Act of the General Assembly of the State of C rado, entitled "An Act in Relation to Assignments for the Ben of Creditors," etc., Approved April 10, 1885, as amended by an thereof, approved April 8, 1893, he has prepared an inventory of estate of said co-partnership, real and personal, according to the

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f his knowledge, with the estimated value thereof, and also a list f the creditors of said co-partnership, giving their names, residence nd amounts of their respective demands, so far as it is practicable o do so at this time, which is hereunto annexed.

That it is impossible for him or the said co-partnership at this ime, to make more accurate statements thereof for the reason that e said assets are scattered throughout several states and part of the ecords and accounts thereof are at offices of the said co-partnership n Salina, Kansas, and in the City of Concord, New Hampshire and full list of all the items comprising the same would involve the transcribing of a vast number of items of property and names 26 of persons and addresses, and the accomplishment thereof would be a physical impossibility, within the time prescribed y said Statute.

That among other assets are numerous tracts of land in Colorado nd Kansas and Mortgages and Trust Deeds upon numerous tracts f land in said States, the separate items of which are very numer- us; and among other liabilities are debenture bonds of the said rm aggregating $530,800.00 to numerous persons whose names are ntirely unknown to affiant, and of which no record was kept by aid co-partnership, but the interest upon which is paid to trustees r the holders of said bonds;

That the matters and things set forth in said statements hereunto nnexed are true in substance, to the best of the knowledge and be- ief of affiant so far as he is now able to verify.

That he is at this time and has been since the filing of said Deed f Assignment doing all in his power to complete and perfect a omplete and full detailed inventory and statements as to all of the ssets and liabilities of said co-partnership, which will when com- leted be furnished to the said Assignee for the preparation of the tatements required by law to be made by him.

JOSEPH J. CRIPPEN.

TATE OF COLORADO,
County of Arapahoe, ss:

Subscribed and sworn to before me this 22nd day of September, . D., 1893.

My commission expires November 30, 1895.

JOHN PARSONS,
[SEAL.] *Notary Public in and for said County — State.*

TATE OF COLORADO,
Arapahoe County, ss:

Stephen H. Standart, being first duly sworn, deposes and says hat he is the same person who is named in the deed of assignment eferred to in the foregoing statement and inventory and valuation; hat the annexed and foregoing statement in writing contains a true nd full inventory and valuation so far as the same has come to is knowledge, of the estate of Crippen, Lawrence & Co., as assigned o him by said deed of assignment; and that all and singular the

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other matters and things set forth and stated in the foregoing sta
ment, are true according to his best knowledge, information and
lief.

STEPHEN H. STANDART.

127 Subscribed and sworn to before me this 14th day of Se
A. D., 1893.

[SEAL.] EDWIN S. ROGERS.

My commission expires Sept. 27, 1896.

STATE OF COLORADO,
City and County of Denver, ss:

I, W. A. Dollison, Clerk of the District Court of the City a
County of Denver, State aforesaid, do hereby certify the above a
foregoing to be a true, complete and perfect transcript and copy
Excerpts from Assignee's Report had and entered of record in
certain cause in said Court lately depending in Re Assignment
Joseph J. Crippen, et al., etc., as the same now remains on file a
of record in this office.

Witness my hand and seal of said Court, at the Court House
Denver, County and State aforesaid, this 2nd day of May, A.
1919.

[SEAL.] W. A. DOLLISON,
Clerk.

____ ____,
Deputy Clerk.

Double Certificate.

Certificate of Judge.

STATE OF COLORADO,
City and County of Denver, ss:

I, Henry J. Hersey, Presiding Judge of the District Court with
and for the Second Judicial District of the State of Colorado (e
bracing the City and County of Denver), the same being a Court
Record having common law jurisdiction, a Seal and a Clerk, here
certify that W. A. Dollison, whose name is signed to the foregoi
certificate and attestation, was at the time of the signing and ense
ing of the same, and is now, Clerk of the District Court within a
for the City and County of Denver, and State of Colorado, duly
pointed and qualified as such, and the keeper of the seal and t
custodian of the Records of said Court; that I am well acquaint
with the handwriting of the said Clerk, and know his signature, a
verily believe the signature to the said certificate and attestation
be the genuine signature of the said Clerk; that the Seal affixed
said certificate is the Seal of the said District Court, that full fa
and credit are due and of right ought to be given to all the offic
acts of the said Clerk in Courts of Record and elsewhere, and that

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said certificate and attestation are in due form of law and by the proper officer.

128 Witness my hand and seal this 2nd day of May, A. D. 1919.

HENRY J. HERSEY,
Presiding Judge of the District Court within and for the Second Judicial District of the State of Colorado.

Certificate of Clerk.

STATE OF COLORADO,
City and County of Denver, ss:

I, W. A. Dollison, Clerk of the District Court of the Second Judicial District of the State of Colorado (Embracing the City and County of Denver) the same being a Court of Record, hereby certify that Hon. Henry J. Hersey, Presiding Judge, whose name is signed to the foregoing certificate and attestation, was at the time of the signing and ensealing of the same, and is now, Presiding Judge of the District Court of the Second Judicial District of the State of Colorado, duly elected and qualified; that I am well acquainted with the handwriting of the said Judge, and know his signature and verily believe the signature to the foregoing certificate and attestation to be the genuine signature of the said Judge.

Witness my hand and official seal the 2nd day of May, A. D. 1919.

W. A. DOLLISON,
[SEAL.] *Clerk of the District Court of the Second Judicial District of the State of Colorado.*

Endorsed: No. 19938. —— ——, Plaintiff, vs. —— ——, Defendant. In re Assignment of Joseph J. Crippen et al., etc. Copy Excerpts from Assignee's Report. District Court, City and County of Denver, Denver, Colo. W. A. Dollison, Clerk.

EXHIBIT 57.

District Court, City and County of Denver (Formerly Arapahoe Co.), Second Judicial District.

STATE OF COLORADO,
City and County of Denver, ss:

(Formerly Arapahoe Co.)

Pleas in the District Court of the City and County of Denver, State of Colorado, in the first division thereof, before the Hon. C.
129 P. Butler, one of the Judges of the Second Judicial District of the said State, at a term thereof begun and held at the court-house in Denver, in said County, on the second Tuesday (it being the fourteenth day) of January, A. D. one thousand eight hundred and ninety-six.

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Present:

Hon. Geo. W. Allen, one of the Judges of the District Court.
Greeley W. Whitford, Esq., District Attorney of said District.
Elias H. Webb, Esq., Sheriff of said County.
G. S. Richards, Esq., Clerk of said Court.

Be it remembered, That heretofore and on to-wit, the 22nd day of January, A. D. 1896, the same being one of the regular judicial days of the January Term, A. D. 1896, of said Court, the following proceedings, inter alia, were had and entered of record in said Court, to-wit:

No. 19938.

In the Matter of the Assignment of CRIPPEN, LAWRENCE COMPANY.

This cause coming on for hearing on the petition of certain creditors herein, asking for an order of the Court for sale of the assets of said firm of Crippen, Lawrence & Company now remaining in the hands of the Assignee, Stephen H. Standart; said Assignee appearing in person and by George L. Hodges, his attorney, and the creditors appearing by Teller, Orahood & Morgan, their attorneys, and the Court having heard the several petitions of the creditors herein and other testimony, together with statements of counsel; and thereupon, the court finds that it would be for the best interests of said assigned estate, and of the creditors thereof, that the assets of said firm of Crippen, Lawrence & Company, now remaining in the hands of said Assignee should be sold, and that the estate be closed.

It is therefore ordered, Adjudged and decreed, That Stephen H. Standart, Assignee, be, and he is hereby authorized, empowered and directed to advertise and sell all of the assets of said firm of Crippen, Lawrence & Company now remaining in his hands, subject to the right of said Assignee to retain the use of the office furniture, safe and books which may be necessary for him to retain until the final closing of the business and trust herein. That such assets shall be advertised by three consecutive insertions in a weekly newspaper published in Arapahoe County, Colorado, giving at least fifteen days' notice of the time, place and the terms of such sale. That
130 said sale take place at the office of said Assignee in the Duff Block, corner of Larimer and 18th Streets in the City of Denver, Colorado, and shall, be for cash in hand. That such advertisement shall give a short description of said assets so that the same may be known or identified by intending bidders. That in making said sale, said Assignee shall first receive for any part or portion of said assets, such bids to be received for entire tracts or entire indebtedness as shown by any one transaction; the Assignee to keep an account of all such bids and the bidders therefor. After all such bids have been made, then the whole of said property shall be offered in bulk, including all property, assets and rights of every kind and description of said firm of Crippen, Lawrence & Company at that time remaining in the hands of said Assignee; and if bids

for the whole of said property in bulk shall be more than the separate bids in parcels, then the property shall be sold as a whole, and the Assignee make conveyances and delivery thereof to the purchaser or purchasers accordingly.

Upon the making of said sale as aforesaid, the Assignee shall report the same to this Court for approval.

It is further ordered, adjudged and decreed that in no event shall the said property be sold for less than the aggregate sum of Thirty-seven Thousand (37,000) Dollars; and in the event of said sum not being bid, the Assignee is hereby ordered to report such fact to this Court for further direction in the premises.

Done in open court this 22nd day of January, A. D. 1896.

GEO. W. ALLEN,
Judge.

STATE OF COLORADO,
City and County of Denver, ss:

I, W. A. Dollison, Clerk of the District Court of the City and County of Denver, State aforesaid, do hereby certify the above and foregoing to be a true, complete and perfect transcript and copy of Order of Court had and entered of record in a certain cause in said Court lately depending in re Assignment of Crippen, Lawrence Company, as the same now remains on file and of record in this office.

Witness my hand and seal of said Court, at the Court House in Denver, County and State aforesaid, this 2nd day of May, A. D., 1919.

[SEAL.] W. A. DOLLISON,
Clerk.

By —— ——,
Deputy Clerk.

131 *Double Certificate.*

STATE OF COLORADO,
City and County of Denver, ss:

Certificate of Judge.

I, Henry J. Hersey, Presiding Judge of the District Court within and for the Second Judicial District of the State of Colorado (embracing the city and county of Denver) the same being a Court of Record having common law jurisdiction, a Seal and a Clerk, hereby certify that W. A. Dollison, whose name is signed to the foregoing certificate and attestation, was at the time of the signing and ensealing of the same, and is now, Clerk, of the District Court within and for the City and County of Denver, and State of Colorado, duly appointed and qualified as such, and the keeper of the seal and the custodian of the records of said Court; that I am well acquainted with the handwriting of the said Clerk, and know his signature, and verily believe the signature to the said certificate and attestation to be the genuine signature of the said Clerk; that the Seal affixed to said certificate is the Seal of the said District Court, that full

faith and credit are due and of right ought to be given to all the official acts of the said Clerk in Courts of Record and elsewhere, and that the said certificate and attestation are in due form of law and by the proper officer.

Witness my hand and seal this 2nd day of May, A. D. 1919.

[SEAL.] HENRY J. HERSEY,
Presiding Judge of the District Court within and for the Second Judicial District of the State of Colorado.

STATE OF COLORADO,
City and County of Denver, ss:

Certificate of Clerk.

I, W. A. Dollison, Clerk of the District Court of the Second Judicial District of the State of Colorado (embracing the City and County of Denver), the same being a Court of Record, hereby certify that Hon. Henry J. Hersey, Presiding Judge, whose name is signed to the foregoing certificate and attestation, was at the time of the signing and ensealing of the same, and is now, Presiding Judge of the District Court of the Second Judicial District of the State of Colorado, duly elected and qualified; that I am well acquainted with the handwriting of the said Judge, and know his signature and verily believe the signature to the foregoing certificate and attestation to be the genuine signature of the said Judge.

Witness my hand and official seal the 2nd day of May, A. D. 1919.

132 [SEAL.] W. A. DOLLISON,
Clerk of the District Court of the Second Judicial District of the State of Colorado.

Endorsed: No. 19938. —— ——, Plaintiff, vs. —— ——, Defendant. In re Assignment of Crippen, Lawrence Company. Copy. Order of Court. District Court, City and County of Denver, Colo. W. A. Dollison, clerk.

EXHIBIT 58.

Assignment.

Henry J. Putman

to

Stephen H. Standart

Filed for Record at 2:40 o'clock p. m., Sept. 18, 1893. A. B. McGaffey, Recorder.

Examined.

This Indenture made this eighteenth day of September A. D. 1893 between Henry J. Putnam and the City of Denver, Arapahoe County, Colorado, party of the first part and Stephen H. Standart of the

same place, party of the second part. Whereas the said party of the first part, owing to sundry losses and business misfortunes; and the depreciation in value of his property and assets; and his inability to so speedily realize upon the same as to punctually and fully discharge his just debts and obligations; and being justly indebted in sundry considerable sums of money, principally in the shape of liabilities to the creditors of the copartnership, heretofore existing between the said party of the first part and Joseph J. Crippen and Henry J. Crippen under the firm name and style of Crippen, Lawrence & Co., which said co-partnership has by deed of assignment, of even date herewith, assigned and transferred all of its property and assets, of every name and nature, and wheresoever the same may be, to the said Stephen H. Standart, as assignee, for the benefit of the creditors thereof the said copartnership being justly indebted in sundry considerable sums of money; and the said Henry J. Putnam, party of the first part, being desirous of making a fair and equitable distribution of all of his property and effects, ratably and proportionately, among all of his creditors, in payment so far as possible, of their just debts, having due regard to the rights of the said co-partnership creditors and of his private creditors, and
133 apportioning and distributing the same as between them, according to law.

Now, therefore, this indenture witnesseth: That the said Henry J. Putnam, party of the first part, in consideration of the premises, and of the sum of One Dollar to him in hand paid, by the said Stephen H. Standart, party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, released, assigned, conveyed and transferred and set over; and by these presents does grant, bargain and sell, release, assign, convey transfer and set over unto the said Stephen H. Standart, party of the second part, and to his heirs, executors, administrators, and assigns, forever, all and singular the lands, tenements, hereditaments and all the goods, chattels, merchandise, bills, stocks, bonds, notes, book accounts, claims, demands, choses in action, judgments, evidences of debt, real estate and property of every name and nature whatsoever, of the said party of the first part, whether standing in the name of the said party of the first part, or in the name of any other person or persons, partnership or corporation, and wheresoever the same may be situate, or be found, whether within or without the State of Colorado, including all lands and real estate, and interests in lands and real estate, of the said party of the first part, in the and each and every of the Counties of Allen, Anderson, Butler, Chautauqua, Clay, Clark, Cloud, Coffey, Comanche, Decatur, Dickinson, Edwards, Elk, Ellsworth, Greenwood, Hodgeman, Jewell, Kingman, Kiowa, Lincoln, Lyon, Marion, Montgomery, Morris, McPherson, Neosho, Norton, Osage, Ottawa, Pawnee, Phillips, Rice, Rush, Saline, Smith, Washington, Wabaunsee, Wilson, Woodson, in the State of Kansas, and wheresoever else, lands, real estate, or interests in lands and real estate of the said party of the first part, may be situate, within the said State of Kansas, it being in no sense the purpose of the said party of the first part in making special reference

to said property in the said State of Kansas, to limit this assignment, which is intended to be an assignment of all of the estate of the said party of the first part, real, personal and mixed; and wheresoever the same may be situate, or be found, for the benefit of all of his creditors.

To have and to hold the same to the said Stephen H. Standart, his heirs, executors, administrators and assigns, forever: In Trust nevertheless, to and for the following uses, intents and purposes, that is to say, that the said party of the second part shall forthwith take possession of all and singular the lands, tenements, hereditaments, property and effects hereby assigned; and sell and dispose of the same for the best prices which he shall be able to obtain, and to convert the same into money; and shall also collect all and singular the said debts, stocks, bonds, notes, accounts, claims, demands and choses in action, or so much thereof as may prove collectible;
134 and thereupon execute, acknowledge and deliver all necessary instruments and conveyances for the purposes aforesaid; and by and with the proceeds of such sales and collections, the said party of the second part shall first pay and disburse all the lawful expenses, costs, charges, and commissions of executing and carrying into effect this assignment, but without other or further charge or compensation for his personal services and attention to the execution thereof, then he shall receive as the assignee of the said partnership of Crippen, Lawrence and Co. within the limitation fixed by the deed of assignment of said co-partnership to the said Standart, of even date herewith, to all of which the said Standart, by accepting the trust hereby reposed in him, expressly accedes and agrees; and by and with the residue or net proceeds and avails of such sales and collections, the said party of the second part shall pay and discharge all the debts, demands and liabilities of the said party of the first part, whatsoever, now existing, whether due, or hereafter to become due, provided such remainder shall be sufficient for that purpose; and, if not sufficient, then the same shall be applied ratably and proportionately among all the creditors of the said party of the first part, in payment and satisfaction as far as possible of the said debts, demands and liabilities, according to their respective amounts, without preference as to any thereof, subject only to exemptions and preferences provided by law, and having due regard to the rights of the partnership creditors of the said co-partnership of Crippen, Lawrence & Co., and the creditors of the said party of the first part, and distributing the same as between them, according to law; and this deed of assignment is intended, with due regard to the rights of partnership and private creditors, as aforesaid, as supplemental to the said deed of assignment of even date herewith, of the said party of the first part hereto and Joseph J. Crippen and Henry J. Crippen, as co-partners as aforesaid; and with the purpose of giving the creditors of the said co-partnership the benefit of the private estate of the said party of the first part, in so far as the same shall be legally applicable to the payment of said partnership debts.

Should any part or portion of said assigned property, or the proceeds or avails thereof remain, after fully complying with all the

purposes of the trust aforesaid, then the said party of the second part shall deliver over and reconvey the same unto the said party of the first part, his heirs, executors, administrators, or assigns.

And for the better execution of these presents, and of the several trusts hereby reposed, the said party of the first part doth hereby make, constitute and appoint the said Stephen H. Standart party of the second part, his true and lawful attorney, irrevocable, with full power and authority to do, transact and perform all acts, deeds, matters and things which may or can be necessary in the
135 premises, as fully and completely as the said party of the first part might or could do, were these presents not executed, hereby ratifying and confirming all and every thing that my said attorney shall do, or cause to be done in the premises.

In Testimony whereof, the said party of the first part has hereunto set his hand and seal, the day and year first herein written.

HENRY J. PUTNAM. [Printed Seal.]

STATE OF COLORADO,
Arapahoe County, ss:

On this eighteenth day of September, A. D., 1893, personally appeared before me, Edward L. Shannon a Notary Public within and for said County and State, Henry J. Putnam who is to me personally known to be the same person who is described in and who executed the annexed and foregoing deed of assignment, and acknowledged that he executed the same as his free and voluntary act and deed, for the uses and purposes therein set forth.

I further certify that my commission as a Notary Public expires on the 30th day of March, A. D. 1897.

Witness my hand and Notarial Seal the day and year first above mentioned.

[Notarial Seal.] EDWARD L. SHANNON,
Notary Public.

I, Stephen H. Standart, the person mentioned in the annexed and foregoing deed of assignment, as assignee of Henry J. Putnam, do hereby accept the trust thereby conveyed to and reposed in me; and in so doing, do assent and agree to the provisions therein contained, as to compensation for my personal services and attention to the execution thereof.

Witness my hand and seal, this eighteenth day of September, A. D. 1893.

STEPHEN H. STANDART. [Printed Seal.]

STATE OF COLORADO,
Arapahoe County, ss:

On this eighteenth day of September, A. D., 1893, personally appeared before me Edward L. Shannon, a Notary Public within and for said County and State, Stephen H. Standart, who is to me per-

sonally known to be the same person described in and who has subscribed his name to the foregoing acceptance, in writing, of the trust aforesaid reposed in him by the annexed deed of assignment; and acknowledged that he executed the same for the uses and purposes therein set forth.

136 I further certify that my commission as a Notary Public expires on the 30th day of March, A. D., 1897.

Witness my hand and Notarial Seal, the day and year first above mentioned.

[Notarial Seal.] EDWARD L. SHANNON,
Notary Public.

STATE OF COLORADO,
City and County of Denver, ss:

I, Charles A. Lammers, Clerk and Recorder in and for said City and County, in the State aforesaid, do hereby certify: That: I am the custodian of the records of the former county of Arapahoe, in the State of Colorado, and that the above and foregoing is a true, correct and complete transcript and copy from the records of my office as the same appears in book 947 at page 192.

Witness my hand and official seal this 1st day of May, 1919.

[SEAL.] CHARLES A. LAMMERS,
Clerk and Recorder.

Certificate.

STATE OF COLORADO,
City and County of Denver, ss:

I, W. A. Dollison, Clerk of the District Court of the Second Judicial District of the State of Colorado, the same being a court of Record, having common law Jurisdiction, a seal and Clerk, hereby certify that Charles A. Lammers, whose name is signed to the foregoing certificate and attestation, was at the time of the signing and ensealing of the same, and is now Clerk and Custodian of the records of the former County of Arapahoe in the State of Colorado; that I am well acquainted with the hand writing of said Clerk and know his signature to be genuine and that full faith and credit are due to all the official acts of the said Clerk and Custodian.

Witness my hand and seal this 2nd day of May, A. D. 1919.

[SEAL.] W. A. DOLLISON,
Clerk of the District Court of the Second Judicial District of the State of Colorado.

Double Certificate.

STATE OF COLORADO,
City and County of Denver, ss:

Certificate of Judge.

I, Henry J. Hersey, Presiding Judge of the District Court within and for the Second Judicial District of the State of Colorado
137 embracing the City and County of Denver) the same being a court of Record having common law jurisdiction, a seal and a Clerk, hereby certify that W. A. Dollison, whose name is signed to the foregoing certificate and attestation, was at the time of the signing and ensealing of the same, and is now, Clerk of the District Court within and for the City and County of Denver, and State of Colorado, duly appointed and qualified as such, and the keeper of the seal and the custodian of the Records of said Court; that I am well acquainted with the hand writing of the said clerk, and know his signature, and verily believe the signature to the said certificate and attestation to be the genuine signature of the said Clerk; that the seal affixed to said certificate is the seal of the said district court, that full faith and credit are due and of right ought to be given to all the official acts of the said Clerk in Courts of Record and elsewhere, and that the said certificate and attestation are in due form of law and by the proper officer.

Witness my hand and seal this 2nd day of May, A. D., 1919.

HENRY J. HERSEY,
Presiding Judge of the District Court Within and for the Second Judicial District of the State of Colorado.

Certificate of Clerk.

STATE OF COLORADO,
City and County of Denver, ss:

I, W. A. Dollison, Clerk of the District Court of the Second Judicial District of the State of Colorado (embracing the City and County of Denver), the same being a Court of Record, hereby certify that Hon. Henry J. Hersey, Presiding Judge, whose name is signed to the foreg-ing certificate and attestation, was at the time of the signing and ensealing of the same, and is now, Presiding Judge of the District Court of the Second Judicial District of the State of Colorado, duly elected and qualified; that I am well acquainted with the hand writing of the said Judge, and know his signature and verily believe the signature to the foregoing certificate and attestation to be the genuine signature of the said Judge.

Witness my hand and official seal the 2nd day of May, A. D. 1919.

[SEAL.]

W. A. DOLLISON,
Clerk of the District Court of the Second Judicial District of the State of Colorado.

138 EXHIBIT 59.

Assignment.

Joseph J. Crippen

to

Stephen H. Standart.

Filed for Record at 2:40 o'clock p. m. Sept. 18, 1893. A. B. McGaffey, Recorder.

Examined.

This Indenture made this eighteenth day of September, A. D. 1893, between Joseph J. Crippen of the City of Denver, Arapahoe County, Colorado, party of the first part; and Stephen H. Standart of the same place party of the second part. Whereas the said party of the first part, owing to sundry losses and business misfortunes and the depreciation in value of his property and assets; and his inability to so speedily realize upon the same, as to punctually and fully discharge his just debts and obligations; and being justly indebted in sundry considerable sums of money, principally in the shape of liability to the creditors of the co-partnership, heretofore existing between the said party of the first part and Henry J. Crippen and Henry J. Putnam under the firm name and style of Crippen, Lawrence & Co., which said co-partnership has, by deed of assignment of even date herewith, assigned and transferred all of its property and assets, of every name and nature, and wheresoever the same may be, to the said Stephen H. Standart as assigne-, for the benefit of the creditors thereof; the said copartnership being justly indebted in sundry considerable sums of money; and the said Joseph J. Crippen, party of the first part being desirous of making a fair and equitable distribution of all of his property and effects, ratably and proportionately, among all of his creditors in payment so far as possible of their just debts, having due regard to the rights of the said co-partnership creditors and of his private creditors, and apportioning and distributing the same as between them, according to law.

Now, therefore, this indenture witnesseth: That the said Joseph J. Crippen party of the first part, in consideration of the premises and of the sum of One Dollar to him in hand paid, by the said Stephen H. Standart, party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, released, assigned, conveyed and transferred and set over; and by these presents

does grant, bargain and sell, release, assign, convey, transfer and set over unto the said Stephen H. Standart, party of the second part, and to his heirs, executors, administrators, and assigns, forever, all and singular the lands, tenements, hereditaments and all the goods, chattels, merchandise, bills, stocks, bonds, notes, book accounts, claims, demands, choses in action, judgments, evidences of debt, real estate, and property of every name and nature whatsoever, of the said party of the first part, whether standing in the name of the said party of the first part, or in the name of any other person or persons, partnership, or corporation, and wheresoever the same may be situate, or be found, whether within or without the State of Colorado, including all lands and real estate, and interests in lands and real estate, of the said party of the first part, in the, and each and every of the counties of Allen, Anderson, Butler, Chautauqua, Clay, Clark, Cloud, Coffey, Comanche, Decatur, Dickinson, Edwards, Elk, Ellsworth, Greenwood, Hodgeman, Jewell Kingman, Kiowa, Lincoln, Lyon, Marion, Montgomery, Norris, McPherson, Neosho, Norton, Osage, Ottawa, Pawnee, Phillips, Rice, Rush, Saline, Smith, Washington, Wabaunsee, Wilson and Woodson, in the State of Kansas, and wheresoever else lands, real estate or interests in lands and real estate of the said party of the first part may, be situate, within the said State of Kansas, it being in no sense the purpose of the said party of the first part, in making special reference to said property in the said State of Kansas, to limit this assignment, which is intended to be an assignment of all of the estate of the said party of the first part, real, personal and mixed; and wheresoever the same may be situate, or be found, for the benefit of all of his creditors.

To have and to hold the same to the said Stephen H. Standart, his heirs, executors, administrators and assigns, forever;

In Trust never the less, to and for the following uses, intents and purposes, that is to say that the said party of the second part shall forthwith take possession of all and singular the lands, tenements, hereditaments, property and effects hereby assigned, and sell and dispose of the same for the best prices which he shall be able to obtain, and to convert the same into money; and shall also collect all and singular the said debts, stocks, bonds, notes, accounts, claims, demands, and choses in action, or so much thereof as may prove collectible, and thereupon execute, acknowledge and deliver all necessary instruments and conveyances for the purposes aforesaid; and, by and with the proceeds of such sales and collections, the said party of the second part shall first pay and disburse all the lawful expenses, costs, charges and commissions of executing and carrying into effect this assignment, but without other or further charge, or compensation for his personal services and attention to the execution thereof, than he shall receive as the assignee of the said partnership of Crippen, Lawrence & Co., within the limitation fixed by the deed of Assignment of said co-partnership to the said Standart, of even date herewith, to all of which the said Standart, by accepting the trust hereby reposed in him, expressly accedes and agrees; and by and with the residue or net

proceeds and avails of such sales and collections, the said party
the second part shall pay and discharge all the debts, demands
liabilities of the said party of the first part, whatsoever, now existi
whether due, or hereafter to become due, provided such remain
shall be sufficient for that purpose; and if not sufficient, then t
same shall be applied ratably and proportionately among all t
creditors of the said party of the first part, in payment and satisfa
tion, as far as possible, of the said debts, demands and liabilities, a
cording to their respective amounts, without preference as to a
thereof, subject only to exemptions and preferences provided by l
and having due regard to the rights of the partnership creditors
the said co-partnership of Crippen, Lawrence & Co., and the credit
of the said party of the first part, and distributing the same as betwe
them, according to law; and this deed of assignment is intende
with due regard to the rights of partnership and private creditors,
aforesaid, as supplemental to the said deed of Assignment of ev
date herewith, of the said party of the first part hereto and Henry
Crippen and Henry J. Putnam as co-partners, as aforesaid; a
with the purpose of giving the creditors of the said co-partnersh
the benefit of the private estate of the said party of the first part,
so far as the same shall be legally applicable to the payment of a
partnership debts.

Should any part or portion of said assigned property, or the p
ceeds, or avails thereof, remain, after fully complying with all t
purposes of the trust aforesaid, then the said party of the second p
shall deliver over and reconvey the same unto the said party of t
first part, his heirs, executors, administrators or assigns.

And for the better execution of these presents, and of the seve
trusts hereby reposed, the said party of the first part does here
make, constitute and appoint the said Stephen H. Standart, pa
of the second part, his true and lawful attorney irrevocable with fu
power and authority to do, transact, and perform all acts, dee
matters and things, which can or may be necessary in the premis
as fully and completely as the said party of the first part, might
could do, were these presents not executed hereby ratifying and co
firming all and every thing that my said attorney shall do, or ca
to be done in the premises.

In Testimony Whereof, the said party of the first part has he
unto set his hand and seal, the day and year first herein written.

JOSEPH J. CRIPPEN. [Printed Seal.]

141 STATE OF COLORADO,
Arapahoe County, ss:

On this eighteenth day of September, A. D., 1893, personally a
peared before me Edward L. Shannon, a Notary Public within an
for said County and State, Joseph J. Crippen, who is to me perso
ally known to be the same person who is described in and who e
excuted the annexed and foregoing deed of assignment, and acknow
edged that he executed the same as his free and voluntary act an
deed, for the uses and purposes therein set forth.

I further certify that my commission, as a Notary Public expires the 30th day of March, A. D., 1897.

Witness my hand and Notarial seal, the day and year above first written.

[Notarial Seal.] EDWARD L. SHANNON,
Notary Public.

I, Stephen H. Standart, the person mentioned in the annexed and foregoing deed of assignment, as assignee of Joseph J. Crippen do hereby accept the trust thereby conveyed to and reposed in me; and in so doing, do assent and agree to the provisions therein contained, as to compensation for my personal services and attention to the execution thereof.

Witness my hand and seal this eighteenth day of September, A. D., 1893.

STEPHEN H. STANDART. [Printed Seal.]

STATE OF COLORADO,
Arapahoe County, ss:

On this eighteenth day of September, A. D. 1893, personally appeared before me, Edward L. Shannon, a Notary Public, within and for said County and State, Stephen H. Standart, who is to me personally known to be the same person described in and who has subscribed his name to the foregoing acceptance, in writing, of the trust aforesaid, reposed in him by the annexed deed of assignment; and acknowl-dged that he executed the same for the uses and purposes therein set forth.

I further certify that my commission as a Notary Public, expires the 30th day of March, A. D., 1897.

Witness my hand and notarial seal, the day and year first above written.

[Notarial Seal.] EDWARD L. SHANNON,
Notary Public.

STATE OF COLORADO,
City and County of Denver, ss:

I, Charles A. Lammers, Clerk and Recorder in and for said City and County, in the State aforesaid, do hereby certify: That I am the custodian of the records of the former County of Arapahoe, in the State of Colorado, and that the above and foregoing is a true, correct and complete transcript and copy from the records of my office as the same appears in book 947 at page 196.

Witness my hand and official seal this 1st day of May, 1919.

[SEAL.] CHARLES A. LAMMERS,
Clerk and Recorder.

Certificate.

STATE OF COLORADO,
City and County of Denver, ss:

I, W. A. Dollison, Clerk of the District Court of the Second Judicial District of the State of Colorado, the same being a Court of

Record having common law jurisdiction, a seal and clerk, herel certify that Charles A. Lammers, whose name is signed to the fo going certificate and attestation, was at the time of the signing a ensealing of the same, and is now Clerk and Custodian of the re ords of the former County of Arapahoe in the State of Colorad that I am well acquainted with the hand writing of said Clerk an know his signature to be genuine and that full faith and credit a due to all the official acts of the said Clerk and Custodian.

Witness my hand and seal this 2nd day of May, A. D. 1919.

[SEAL.] W. A. DOLLISON,
Clerk of the District Court of the Second Judicial District of the State of Colorado.

Double Certificate.

Certificate of Judge.

STATE OF COLORADO,
City and County of Denver, ss:

I, Henry J. Hersey, Presiding Judge of the District Court withi and for the Second Judicial District of the State of Colorado (em bracing the City and County of Denver), the same being a Court o Record having common law jurisdiction, a Seal and a Clerk hereb certify that W. A. Dollison, whose name is signed to the fore
143 going certificate and attestation, was at the time of the sign ing and ensealing of the same, and is now, Clerk of the Dis trict Court within and for the City and County of Denver, and Stat of Colorado, duly appointed and qualified as such, and the keeper o the seal and the custodian of the Records of said Court; that I am well acquainted with the hand writing of the said Clerk, and know his signature, and verily believe the signature to the said certificat and attestation to be the genuine signature of the said Clerk; tha the seal affixed to said certificate is the Seal of the said District Court that full faith and credit are due and of right ought to be given t all the official acts of the said Clerk in Courts of Record and else where, and that the said certificate and attestation are in due form of law and by the proper officer.

Witness my hand and seal this 2nd day of May, A. D., 1919.

[SEAL.] HENRY J. HERSEY,
Presiding Judge of the District Court Within and for the Second Judicial District of the State of Colorado.

STATE OF COLORADO,
City and County of Denver, ss:

Certificate of Clerk.

I, W. A. Dollison, Clerk of the District Court of the Second Judicial District of the State of Colorado (embracing the city and county of Denver), the same being a court of Record, hereby certify that Hon. Henry J. Hersey, Presiding Judge, whose name is signed to the foregoing certificate and attestation, was at the time of the signing and ensealing of the same, and is now, Presiding Judge of the District Court of the Second Judicial District of the State of Colorado, duly elected and qualified; that I am well acquainted with the hand writing of the said Judge, and know his signature and verily believe the signature to the foregoing certificate and attestation to be the genuine signature of the said Judge.

Witness my hand and official seal the 2nd day of May, A. D., 1919.

[SEAL.]

W. A. DOLLISON,
Clerk of the District Court of the Second Judicial District of the State of Colorado.

144 EXHIBIT 3.

Abstract.

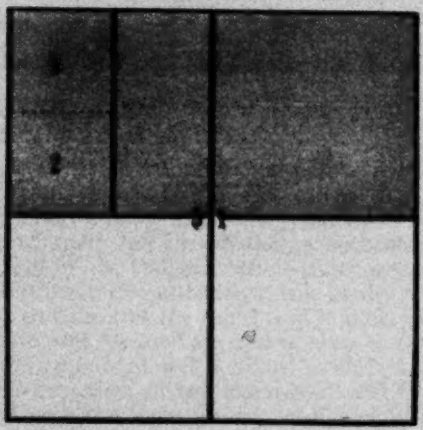
No. 1029.

To the following-described Real Estate situate in Butler County, Kansas, to-wit: The North ½ of Section 31 in Township 26 South and in Range 5 East, containing (320) Acres, more or less.

For J. H. Keith, Coffeyville, Kansas.

Entry No. 1.

Twp. 26, Range 5 E.



Compiled by J. C. Hoyt & Co., El Dorado, Kansas.

Sheet No. 1.

Entry No. 1½.

Volume 1, Page 362.

John Pierce and Margaret Pierce, Butler County, Kansas,

to

John J. Donnelly, Butler County, Kansas.

Lease.

Dated November 16, 1877.
Filed November 17, 1877.
Consideration, $1.00.

145 Hereby leases to said party of the second part, his heirs, executors, administrators and assigns, the following described land in Butler County, Kansas, described as follows, to wit: North East ¼ of Section 31, Township 26, Range 5 East, containing 160 acres, more or less, for the purpose of mining and operating for oil, salt and other minerals on said land, for the term of 50 years, said second party to have exclusive right to mine for oil, salt and other minerals on said land during the continuance of said term and in case successful in obtaining oil or other minerals agree to deliver to said party of the first part 1-16 oil, etc., and it is further agreed that said second partys have the right to sublease said land for the purpose of boring for oil or other minerals, the said lessee or lessees being granted all the rights and privileges herein granted to said party of the second part.

Acknowledged November 16, 1877 before

JAS. A. DEWAR, [SEAL.]
Notary Public, Butler County, Kansas.

Entry No. 2.

Record of Lands entered in Book A, Page 161 in the office of the County Clerk of Butler County, Kansas, shows that the North East ¼ of Section 31, Township 26, Range 5 East, containing 160 acres, was entered October 5, 1880 by John Pierce.

Entry No. 3.

Volume 46, Page 445.

United States of America

to

John Pierce, Butler County, Kansas.

Patent.

Dated October 20, 1882.
Filed January 16, 1894.
Consideration—Full payment.

Give and Grant unto John Pierce, the North East ¼ of Section 31, Township 26, Range 5, East, containing 160 acres.

By the President,

[Seal G. L. O.]

CHESTER A. ARTHUR,
By O. L. JUDD,
Assistant Secretary.

140 *Entry No. 4.*

Volume Q, Page 165.

John Pierce and Wife, Mary M. Pierce,

to

Travelers' Insurance Company.

Mortgage.

Dated September 1, 1880.
Filed October 13, 1880.
Consideration—$300.00.

Convey and mortgage: The North East ¼ of Section 31, Township 26, Range 5 East, containing 160 acres, more or less, to secure the payment of one note for $300.00 of this date payable 5 years after date, with 8 per cent interest payable semi-annually on the 1st days of March and September each year. Clear of all incumbrances.
Acknowledged October 6, 1880 before
CHANCY GALLIHER, [SEAL.]
Notary Public, Butler County, Kansas.

STATE OF KANSAS,
Butler County, ss:

This Mortgage was foreclosed in District Court of said County and Judgment rendered on 1st day of May, 1883 and entered on Journal E, page 411 of said Court, property sold and sale confirmed. Witness my hand this 20th day of March, 1903.

G. W. LANE,
Clerk of District Court.

Attest:
H. G. SANDIFER,
Deputy Register of Deeds.

J. C. Hoyt & Co. Sheet No. 2. El Dorado, Kansas.

Entry No. 4½.

Volume S, Page 510.

John Pierce and Wife, Mary M. Pierce,

to

A. D. Wear.

Mortgage.

Dated September 1, 1880.
Filed October 15, 1881.
Consideration—$15.00.

147 Convey and Mortgage: The North East ¼ of Section 31, Township 26, Range 5 East, containing 160 acres, more or less to secure the payment of the one note for $15.00 of this date, payable in equal installments of $1.50 each, on the 1st days of March and September in each year. Clear of all incumbrances.

Acknowledged October 7, 1880, before

CHANEY GALLIHER, [SEAL.]
Notary Public, Butler County, Kansas.

STATE OF KANSAS,
Butler County, ss:

This mortgage was foreclosed in District Court of said County and Judgment rendered on 1st day of May, 1883, and entered on Journal E, Page 411 of said Court, property sold and sale confirmed. Witness my hand this 20th day of March, 1903.

G. W. LANE,
Clerk of District Court.

Attest:
H. G. SANDIFER,
Deputy Register of Deeds.

Entry No. 5.

Volume 34, Page 191.

W. H. Douglass, Sheriff of Butler County, Kansas,

to

The Travelers' Insurance Company.

Sheriff's Deed.

Dated January 11, 1884.
Filed February 9, 1884.
Consideration—$100.00.

Instrument recites: That under and by virtue of an order of sale dated Novem[illegible]er 16, 1883, issued out of the District Court of Butler County, Kansas, in pursuance of a decree of said Court, rendered May 1, 1883, in an action where The Travelers' Insurance Company was Plaintiff, and John Pierce and Mary M. Pierce, John J. Donnelly and A. D. Wear were Defendants, said sale having been confirmed by said Court at the January 1884 Term. Therefore said W. H. Douglass, Sheriff of Butler County, Kansas, and the Sheriff who made said sale, in consideration of the premises and of the sum of $100.00 Give, Grant and Convey unto the said The Travelers' Insurance Company, its successors and assigns, The North East ¼ of Section 31, Township 26, Range 5 East, in Butler County, Kansas. To Have and to Hold the same, together with all and singular the tenements, hereditaments and appurtenances there unto belonging forever.

Acknowledged January 11, 1884, before
A. L. L. HAMILTON, [SEAL.]
Notary Public, Butler County, Kansas.

148 *Entry No. 6.*

Volume 43, Page 362.

The Travelers' Insurance Company (Seal), by J. G. Batterson, President, Hartford, Connecticut,

to

Sanford H. Grow, Butler County, Kansas.

Special Warranty Deed.

Dated March 15, 1886.
Filed April 10, 1886.
Consideration—$800.00.

Release, remise and convey: The North East ¼ of Section 31, Township 26, Range 5 East, 160 acres, with appurtenances in fee simple, free from all incumbrances. And said The Travelers' Insurance Company will warrant and defend the same unto the said second party, his heirs and assigns forever, against the lawful claims of all persons, by, through or under it.

Acknowledged March 15, 1886, before
HENRY E. FILTS, [SEAL.]
Notary Public, Hartford County, Connecticut.

Entry No. 7.

Volume 43, Page 417.

Sanford H. Grow, Unmarried,

to

The Travelers' Insurance Company, a Corporation.

Mortgage.

Dated March 1, 1886.
Filed April 10, 1886.
Consideration—$800.00.

Convey and mortgage: The North East ¼ of Section 31 in Township 26, Range 5 East, containing 160 acres, to secure the payment of the sum of $800.

Acknowledged April 10, 1886 before
JOHN C. HOYT, [SEAL.]
Notary Public, Butler County, Kansas.

See Release at Next Entry.
J. C. Hoyt & Co. Sheet No. 3. El Dorado, Kansas.

149 *Entry No.* 8.

Volume 70, Page 535.

The Travelers' Insurance Company, by Rodney Dennis, Secretary,
to
Sanford H. Grow.

Release.

Dated January 20, 1894.
Filed January 25, 1894.
Consideration—Full Payment.

Does hereby release a certain Mortgage Deed made by Sanford H. Grow, unmarried, dated March 1, 1886 and recorded in Book 43, Page 417 and does hereby acknowledge satisfaction of the debt secured by said Mortgage.

Acknowledged January 20, 1894 before
HENRY E. FITTS, [SEAL.]
Notary Public, Hartford County, Connecticut.

Entry No. 9.

Volume 43, Page 443.

Sanford H. Grow, a Single Man,
to
C. L. Harris.

Mortgage.

Dated March 1, 1886.
Filed April 14, 1886.
Consideration—$200.00.

Convey and mortgage: The North East ¼ of Section 31, Township 26, Range 5 East, containing 160 acres, more or less to secure the payment of the sum of $200.00. Clear of all incumbrances, except one Mortgage of $600.00 held by the Travelers' Insurance Co.

Acknowledged April 10, 1886 before
JOHN C. HOYT, [SEAL.]
Notary Public, Butler County, Kansas.

See Release at Next Entry.

Entry No. 10.

Volume 43, Page 443.

C. L. Harris

to

Sanford H. Grow.

150 Release.

Dated November 4, 1886.
Filed November 4, 1886.
Consideration—Full Payment.

Margin.

For Value Received, I hereby acknowledge satisfaction of this Mortgage in full and release the same from record.

C. L. HARRIS.

Attest:
M. H. TAYLOR,
Deputy Register of Deeds.

Entry No. 11.

Volume 63, Page 590.

Sanford H. Grow, Single, Butler County, Kansas,

to

Angie Grow, Butler County, Kansas.

Warranty Deed.

Dated August 27, 1891.
Filed August 27, 1891.
Consideration—$500.00.

Grant, bargain, sell, release, remise, convey and confirm: The North East ¼ of Section 31, Township 26, Range 5 East (and other land) with appurtenances in fee simple, free from all incumbrances, except a Mortgage of $600.00. And said Sanford H. Grow will warrant and defend the same unto the said second party, her heirs and assigns forever, against the lawful claims of all persons.

Acknowledged August 27, 1891, before
C. R. ALGER, [SEAL.]
Notary Public, Butler County, Kansas.

Entry No. 12.

Volume 71, Page 329.

Angie Grow and Husband, Sanford R. Grow, Butler County, Kansas.

to

The Travelers' Insurance Company, Hartford, Connecticut.

151 Warranty Deed.

Dated January 12, 1894.
Filed January 16, 1894.
Consideration—$625.00.

Grant, bargain, sell, release, remise, convey and confirm: The North East ¼ of Section 31 in Township 26, Range 5 East, containing 160 acres, more or less, with appurtenances. And said Angie Grow and Sanford R. Grow will warrant and defend the same unto the said second party, its successors and assigns forever, against the lawful claims of all persons. Instrument further recites that the Grantors herein accepts in full payment therefor, the surrender of a note of $600.00 described in a mortgage in Vol. 43, Page 417, wherein Sanford R. Grow is Grantor and The Tvalerers' Insurance Company is Grantee, and the sum of $25.00 in Cash.

Acknowledged January 16, 1894 before
[SEAL.] DANIEL BOYDEN,
Notary Public, Butler County, Kansas.

Entry No. 13.

Volume 101, Page 449.

The Travelers' Insurance Company (Seal), By S. C. Dunham, President; Attest: J. S. Scott, Assistant Secretary, to

N. F. Frazier, Butler County, Kansas.

Special Warranty Deed.

Dated March 14, 1903.
Filed March 23, 1903.
Consideration—$1,000.00.

Bargain, sell, release, remise and convey: The North East ¼ of Section 31, Township 26, Range 5 East, containing 160 acres, more or less, with appurtenances in fee simple, free from all incumbrances. And said The Travelers' Insurance Company will warrant and defend the same unto the said second party, his heirs and assigns forever, against the lawful claims of all persons, by, through or under it.

Acknowledged March 14, 1903 before
HENRY E. FITTS, [SEAL.]
Notary Public, Hartford County, Connecticut.

Entry No. 14.

Records of Lands entered in Book A at Page 161 in the
152 office of the County Clerk of Butler County, Kansas, shows that Lots 1 and 2 and East ½ of North West ¼ of Section 31 in Township 26, Range 5, East containing 160 acres, was entered ——— —, ——, by Loraine C. Cherrington.

Entry No. 15.

Volume Misc. A, Page 213.

United States of America

to

Loraine C. Cherrington.

Receipt.

Dated March 31, 1876.
Filed May 15, 1876.
Consideration—$186.76.

Received from Loraine C. Cherrington of Butler County, Kansas, the sum of $186.76, being full for Lots 1 and 2 and East ½ of North West ¼ of Section 31 in Township 26 of Range 5 East, containing 149.41 at $1.25 per acre.

J. C. REDFIELD,
Receiver.

J. C. Hoyt & Co. Sheet No. 5. El Dorado, Kansas.

Entry No. 16.

Volume T, Page 160.

United States of America

to

Loraine C. Cherrington.

Patent.

Dated November 3, 1876.
Filed May 17, 1881.
Consideration—Full Payment.

Give and Grant unto Loraine C. Cherrington, Lots 1 and 2 and East ½ of North West ¼ of Section 31, Township 26, Range 5 East, containing 149.41 acres.

By the President:
[SEAL G. L. O.]

U. S. GRANT,
By D. D. CONE,
Secretary.

153

Entry No. 17.

Volume N, Page 22.

Loraine C. Cherrington and Miriam L. Cherrington, His Wife, Butler County, Kansas,

to

William Westfall, Sullivan County, Missouri.

Warranty Deed.

Dated March 31, 1876.
Filed May 15, 1876.
Consideration—$500.00.

Grant, bargain, sell, release, remise, convey and confirm: Lots 1 and 2 and East ½ of North West ¼ of Section 31 in Township 26, Range 5 East, containing 149.41 acres, more or less, with appurtenances in fee simple, free from all incumbrances. And said Loraine C. Cherrington and Miriam L. Cherrington will warrant and defend the same unto the said second party, his heirs and assigns forever, against the lawful claims of all persons.

Acknowledged March 31, 1876, before

E. M. MISNER, [SEAL.]
Notary Public, Sedgwick County, Kansas.

Entry No. 18.

Volume N, Page 153.

William Westfall and Mary E. Westfall, His Wife, Sullivan County, Missouri,

to

Miriam L. Cherrington, Butler County, Kansas.

Warranty Deed.

Dated July 29, 1876.
Filed October 24, 1876.
Consideration—$500.00.

Grant, bargain, and sell: Lots 1 and 2 and East ½ of North West ¼ of Section 31 in Township 26, Range 5 East, containing 149.41 acres, more or less, with appurtenances in fee simple, free from all incumbrances. And said William Westfall will warrant and defend the same unto the said second party, her heirs and assigns forever, against the lawful claims of all persons.

Acknowledged July 29, 1876 before
WILLIAM SPEAKER,
Justice of the Peace, Sullivan County, Missouri.

J. C. Hoyt & Co. Sheet No. 6. El Dorado, Kansas.

154 *Entry No.* 19.

Volume F, Page 411.

Miriam L. Cherrington and Loraine C. Cherrington, Her Husband,

to

The New England Mortgage Security Company.

Mortgage.

Dated May 10, 1877.
Filed May 18, 1877.
Consideration—$300.00.

Convey and mortgage: Lots 1 and 2 and the East ½ of Northwest ¼ of Section 31, in Township 26, Range 5 East, containing 149.41 Acres, to secure the payment of the sum of $300.00.

Acknowledged May 18, 1877, before
W. O. REDDEN, [SEAL.]
Notary Public, Butler County, Kansas.

See Release at Next Entry.

Entry No. 20.

Volume P, Page 544.

The New England Mortgage Security Company, by Charles L. Flint, President,

to

Miriam L. Cherrington and Loraine C. Cherrington.

Release.

Dated May 26, 1881.
Filed June 6, 1881.
Consideration—Full Payment.

In consideration of the payment of the debt named therein, the New England Mortgage Security Company releases the Mortgage made by Miriam L. Crerrington and Loraine C. Cherrington to said Company, which is recorded in Book F of Mortgages Page 411 of the records of Butler County, Kansas.

Acknowledged May 26, 1881 before

EDW. F. MERRIHEW, [SEAL.]
Commissioner of Deeds for Kansas,
Suffolk County, Massachusetts.

Entry No. 21.

Volume Y, Page 492.

Miriam L. Cherrington and Husband, Loraine C. Cherrington, Butler County, Kansas,

to

L. C. Culbreath, Butler County, Kansas.

155 Warranty Deed.

Dated October 18, 1879.
Filed April 25, 1881.
Consideration—$300.00.

Grant, bargain, sell, release, remise, convey and confirm: Lots 1 nd 2 and East ½ of North West ¼ of Section 31, Township 26, Range 5 East, containing 149.40 Acres, more or less, with appurenances in fee simple, free from all incumbrances, except a mortage of $300.00 to New England Mortgage Security Company, dated lay 10, 1877. And said parties of first part will warrant and deend the same unto the said second party, his heirs and assigns forver, against the lawful claims of all persons.

Acknowledged October 18, 1879, before

A. L. L. HAMILTON, [SEAL.]
Notary Public, Butler County, Kansas.

Entry No. 22.

Volume Q, Page 105.

Leroy C. Culbreath and Wife, Mary A. Culbreath,

to

Timothy B. Sweet, Trustee for J. W. Smith.

Deed of Trust.

Dated May 2, 1881.
Filed May 17, 1881.
Consideration—$1.00.

Convey and mortgage: The East ½ of North West ¼ and Lots 1 and 2 of Section 31, Township 26, Range 5 East, containing 149.51 Acres, more or less, to secure the payment of the sum of $700.00. Clear of all incumbrances.

Acknowledged May 17, 1881, before
S. L. DELATENTE, [SEAL.]
Notary Public, Butler County, Kansas.

See R-lease at Next Entry.

J. C. Hoyt & Co. Sheet No. 7. El Dorado, Kansas.

Entry No. 23.

Volume 32, Page 275.

156 Timothy B. Sweet, Trustee,

to

Leroy C. Culbreath and Wife, Mary A. Culbreath.

Release.

Dated August 6, 1885.
Filed August 10, 1885.
Consideration—$1.00.

Whereas, Leroy C. Culbreath and Mary A. Culbreath his wife, executed to this Grantor as Trustee a deed of trust dated May 2, 1882, conveying to this grantor in Trust for the purposes therein set forth, the following land in Butler County, Kansas, to-wit: The East ½ of North West ¼ and Lots 1 and 2 in Section 31, Township 26, Range 5 East, recorded in Vol. Q., Page 105, and Whereas, the conditions of said Trust Deed have been fulfilled and said deed has by virtue thereof become fully satisfied by a deed dated December 27, 1883, executed by Leroy C. Culbreath and wife to George M. Noble. Therefore I, Timothy B. Sweet, Trustee under said deed, in consideration of the premises and the sum of $1.00 paid before the delivery hereof, with the full knowledge and consent of said third party do hereby grant, convey, release and forever quit claim to the said Leroy C. Culbreath and Mary A. Culbreath, their heirs and assigns, all right, title and interest in me vested by virtue of said Trust Deed, in or to the premises aforesaid.

Acknowledged August 6, 1885, before
THOMAS A. PAGE, [SEAL.]
Notary Public, Shawnee County, Kansas.

Entry No. 24.

Volume S, Page 157.

Leroy C. Culbreath and Wife, Mary A. Culbreath,

to

J. W. Smith.

Mortgage.

Dated May 2, 1881.
Filed May 19, 1881.
Consideration—$70.00.

Convey and mortgage: The East ½ of North West ¼ and Lots 1 and 2 of Section 31, Township 26, Range 5 East, containing 149.51 Acres, more or less, to secure the payment of the sum of $70.00. Clear of all encumbrances.

Acknowledged May 17, 1881, before
S. L. DELATENTE, [SEAL.]
Notary Public, Butler County, Kansas.

See Release at Next Entry.

157 *Entry No.* 25.

Volume S, Page 157.

J. W. Smith

to

Leroy C. Culbreath and Wife, Mary A. Culbreath.

Release.

Dated December 14, 1885.
Filed December 16, 1885.
Consideration—Full Payment.

Margin.

The conditions of within Mortgage having been fully satisfied, the same is hereby released.

J. W. SMITH.

This Release was filed for Entry and duly entered from the original mortgage.

J. A. McGINNIS,
Register of Deeds.

J. C. Hoyt & Co. Sheet No. 8. El Dorado, Kansas.

Entry No. 26.

Volume 36, Page 53.

Leroy C. Culbreath and Mary A. Culbreath, His Wife, Butler County, Kansas,

to

George M. Noble, Shawnee County, Kansas.

Quit Claim Deed.

Dated December 27, 1883.
Filed December 28, 1883.
Consideration—$5.00.

Release, remise and quit claim: Lots 1 and 2, and the East ½ of North West ¼ of Section 31, Township 26, Range 5 East, To Have and to Hold the same, Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, forever.

Acknowledged December 27, 1883, before
C. C. JONES, [SEAL.]
Notary Public, Butler County, Kansas.

158 *Entry No.* 27.

Volume 43, Page 222.

George M. Noble and Eva R. Noble, His Wife, Shawnee County, Kansas,

to

Eben D. Marr, Bourbon County, Kansas.

Warranty Deed.

Dated August 1, 1885.
Filed December 14, 1885.
Consideration—$1,400.00.

Grant and convey: Lots 1 and 2 and the East ½ of North West ¼ of Section 31, in Township 26, Range 5 East, containing 149.51 Acres, more or less, with appurtenances in fee simple, free from all encumbrances. And said George M. Noble and Eva R. Noble will warrant and defend the same in the quiet and peaceable possession of the said second party, his heirs and assigns forever, against the lawful claims of all persons.

Acknowledged August 13, 1885, before
L. A. BUNKER, [SEAL.]
Notary Public, Shawnee County, Kansas.

Entry No. 28.

Volume 48, Page 521.

Eben D. Marr and Fannie M. Marr, His Wife, Bourbon County, Kansas,

to

Henry Boettcher, Macoupin County, Illinois.

War-anty Deed.

Dated November 23, 1885.
Filed December 14, 1885.
Consideration—$3,200.00.

Grant, bargain, sell and convey: The North West ¼ of Section 31, in Township 26, Range 5 East, with appurtenances in fee simple, free from all encumbrances. And said Eben D. Marr will warrant and defend the same unto the said second party, his heirs and assigns forever, against -he lawful claims of all persons.

Acknowledged November 23, 1885, before
L. A. WARFIELD, [SEAL.]
Notary Public, Bourbon County, Kansas.

J. C. Hoyt & Co. Sheet No. 9. El Dorado, Kansas.

159 *Entry No.* 29.

Volume 34, Page 51.

Henry Boettcher and Wife, Christiana E. Boettcher,

to

Timothy B. Sweet, Trustee for E. M. Shelden.

Deed of Trust.

Dated November 2, 1885.
Filed December 17, 1885.
Consideration—$1.00.

Convey and mortgage: Lots 1 and 2 and East ½ of North West ¼ of Section 31, Township 26, Range 5 East, to secure the payment of one note for $700.00 of this date, payable 5 years after date, with 7 per cent interest, payable semi-annually, on 2nd days of May and November in each year. Clear of all encumbrances.

Acknowledged December 3, 1885, before
J. F. CUMMINGS, [SEAL.]
Notary Public, Macoupin County, Illinois.

See Release at Next Entry.

Entry No. 30.

Volume 59, Page 602.

E. M. Sheldon and Timothy B. Sweet, Trustee,

to

Henry Boettcher and Wife, Christina E. Boettcher.

Release.

Dated July 9, 1889.
Filed July 15, 1889.

Henry Boettcher and Christiana E. Boettcher, executed and delivered to Timothy B. Sweet, Trustee, a deed of Trust dated November 2, 1885, conveying to him in Trust, the following described land in Butler County, Kansas, to-wit: Lots 1 and 2 and East ½ of North West ¼ of Section 31, Township 26, Range 5, East, recorded in Volume 34, Page 51, and Whereas the conditions of said trust deed have been fulfilled and said deed has by virtue thereof become fully satisfied by payment in full of the note secured by said trust deed. Now, therefore, We, Timothy B. Sweet, Trustee, and E. M. Shelden, holder and present owner of the note secured thereby as payee, in consideration of the premises and of the sum of $1.00 paid, do hereby Grant, Convey, release and for ever Quit Claim to the said Henry Boettcher and Christiana E. Boettcher, their heirs and assigns, all right, title and interest in or to the premises aforesaid in us vested by virtue of said trust deed.

160 Acknowledged by Timothy B. Sweet on July 9, 1889, before
J. H. NOBLE, [SEAL.]
Notary Public, Shawnee County, Kansas.

Acknowledged by E. M. Shelden on July 9, 1889, before
J. H. NOBLE, [SEAL.]
Notary Public, Shawnee County, Kansas.

Entry No. 31.

Volume 36, Page 368.

Henry Boettcher and Christiana E. Boettcher, His Wife,

to

E. M. Shelden.

Mortgage.

Dated November 2, 1885.
Filed December 17, 1885.
Consideration—$300.00.

Convey and mortgage: Lots 1 and 2 and East ½ of North West ¼ of Section 31, in Township 26, Range 5 East, to secure the payment of the sum of $300.00.

Acknowledged December 3, 1885, before
J. F. CUMMINGS, [SEAL.]
Notary Public, Macoupin County, Illinois.

See Release at Next Entry.

J. C. Hoyt & Co. Sheet No. 10. El Dorado, Kansas.

Entry No. 32.

Volume 36, Page 368.

E. M. Shelden

to

Henry Boettcher and Christiana Boettcher, His Wife.

Release.

Dated January 19, 1887.
Filed May 24, 1887.
Consideration—Full payment.

Margin.

Received of Henry Boettcher, the within named Mortgagee, the sum of $300.00 in full satisfaction of the with- mortgage.
E. M. SHELDEN.

161 This satisfaction was filed for entry and duly entered from original mortgage.
J. A. McGINNIS,
Regist-r of Deeds,
By M. H. TAYLOR,
Deputy.

Entry No. 33.

Volume 56, Page 371.

Henry Boettcher and Ersterne Boettcher, His Wife,

to

W. C. Gunn.

Mortgage.

Dated January 18, 1888.
Filed January 31, 1888.
Consideration—$156.00.

Convey and Mortgage: The North West ¼ of Section 31, in Township 26, Range 5 East, to secure the payment of the sum of $156.00.

Acknowledged January 23, 1888 before
W. A. SHANNON, [SEAL.]
Notary Public, Butler County, Kansas.

See Release at Next Entry.

Entry No. 34.

Volume 56, Page 371.

W. C. Gunn

to

Henry Boettcher and Ersterne Boettcher, His Wife.

Release.

Dated June 18, 1889.
Filed June 24, 1889.
Consideration—Full Payment.

Margin.

For Value Received I hereby acknowledge full payment and satisfaction of the within Mortgage and hereby authorize the Register of Deeds of Butler County, Kansas, to discharge the same of record.

W. C. GUNN.

This Satisfaction was filed for Entry and duly entered from original Mortgage.

DANIEL BOYDEN,
Register of Deeds,
By CHAS. G. RIGBY,
Deputy.

162 *Entry No.* 35.

Volume 64, Page 97.

Henry Boettcher and Christiana Boettcher, His Wife, Butler County, Kansas,

to

Julius M. Turner, Butler County, Kansas.

Warranty Deed.

Dated May 6, 1889.
Filed June 6, 1889.
Consideration—$1.00 and the Exchange of Property.

Grant, Bargain, Sell and Convey: The North West ¼ of Section 31, in Township 26, Range 5 East, the same being lots 2 and 1 in East ½ of North West ¼, with appurtenances in fee simple, free from all encumbrances, except a mortgage of $700.00. And said Henry Boettcher and Chri-tiana Boettcher will warrant and defend the same unto the said second party, his heirs and assigns forever, against the lawful claims of all persons.

Acknowledged May 6, 1889, before

B. F. MEEKS, [SEAL.]
Notary Public, Butler County, Kansas.

J. C. Hoyt & Co. Sheet No. 11. El Dorado, Kansas.

Entry No. 36.

Volume 60, Page 476.

Julius M. Turner and Wife, Rebecca Turner,

to

Crippen, Lawrence & Company.

Mortgage.

Dated May 21, 1889.
Filed June 9, 1889.
Consideration—$1,200.00.

Convey and Mortgage: The East ½ of North West ¼ and Lots 1 and 2 of Section 31,Township 26, Range 5 East, containing 160 Acres, more or less, to secure the payment of the sum of $1,200.00. Clear of all encumbrances.

163 Acknowledged June 5, 1889, before

W. M. FISHER, [SEAL.]
Notary Public, Butler County, Kansas.

See Release Next Entry.

Entry No. 37.

Volume 60, Page 476.

Crippen, Lawrence & Co.

to

Julius M. Turner and Wife, Rebecca Turner.

Release.

Dated October 12, 1896.
Filed October 14, 1896.
Consideration—Full Payment.

Margin.

Crippen, Lawrence & Co., the mortgagee within named, do hereby acknowledge full payment of the Bond by the foregoing mortgage secured, and authorize the Register of Deeds of Butler County, Kansas, to discharge the same of record.

CRIPPEN, LAWRENCE & CO.,
By J. J. CRIPPEN,
Partner.

This satisfaction was filed for entry and duly entered from original mortgage.

S. H. BRANDON,
Register of Deeds,
By CHAS. G. RIGBY,
Deputy.

Entry No. 38.

Volume 59, Page 515.

Julius M. Turner and Rebecca Turner, His Wife,

to

Crippen, Lawrence & Co.

Mortgage.

Dated May 21, 1889.
Filed June 7, 1889.
Consideration—$150.00.

Convey and Mortgage: The East ½ of North West ¼ and Lots 1 and 2, all in Section 31, Township 26, Range 5 East, containing 160 Acres, more *of* less, to secure the payment of the sum of $150.00. Clear of all encumbrances, except a prior mortgage to Crippen, Lawrence & Co., for $100.00.

164 Acknowledged June 5, 1889, before
W. M. FISHER, [SEAL.]
Notary Public, Butler County, Kansas.

Margin.

State of Kansas, Butler County, ss. This Mortgage was foreclosed in District *District* Court of said County and Judgment rendered on the 8 day of June, 1892, and entered on Journal R, Page 224 of said Court and property sold. This 30th day of March, 1893.

A. W. SWIGGETT,
District Clerk.

Attest:
M. A. PALMER,
Register of Deeds.

J. C. Hoyt & Co. Sheet No. 12. El Dorado, Kansas.

Entry No. 39.

Volume 66, Page 365.

J. W. Middleton, Sheriff of Butler County, Kansas,

to

J. E. Putnam.

Sheriff's Deed.

Dated March 20, 1893.
Filed March 25, 1893.
Consideration—$150.00.

Instrument recites: That under and by virtue of an order of Sale, dated December 16, 1892, issued out of the District Court of Butler County, Kansas, in pursuance of a decree of said Court rendered June 8, 1892, in an action wherein Peter Sanborn was Plaintiff and Julius M. Turner and Rebecca Turner, his wife, M. M. Vandenburg, H. I. Allen, A. G. Thompson, Kate Lafferty, A. W. Dennison and A. W. Flored were Defendants, said Sale having been confirmed by said Court at the March 1893 Term. Therefore said J. W. Middleton, Sheriff of Butler County, Kansas, and the Sheriff who made said sale, in consideration of the premises and of the sum of $150.00, Give, Grant and Convey unto the said J. E. Putman, his heirs and assigns, the East ½ of North West ¼ and Lots 1 and 2 in Section 31, Township 26, Range 5 East, in Butler County, Kansas. To Have and to Hold the same, together with all and singular the tenements, hereditaments and appurtenances thereunto belonging forever.

Acknowledged March 20, 1893, before
A. SWIGGETT, [SEAL.]
Clerk County Court, Butler County, Kansas.

165 *Entry No.* 40.

Volume 74, Page 285.

J. E. Putnam, Salina, Kansas,

to

Stephen H. Standart, Assignee.

Deed.

Dated September 21, 1893.
Filed September 30, 1893.
Consideration—$1.00.

Recites: Whereas, Crippen, Lawrence & Co., a co-partnership consisting of Joseph J. Crippen, Henry J. Crippen and Henry J. Putnam, have made a deed of assignment of all their property, real and personal, to Stephen H. Standart, as assignee, of Denver, Colorado, for the benefit of their creditors, said deed being dated September 18, 1893, and filed for record on the same day, in the office of the Clerk and Recorder of Arapahoe County, in the State of Colorado, and Whereas, the legal title to the following lands and tenements, situated in Butler County, Kansas, appears of the record in J. E. Putnam, who nevertheless holds said title in trust for the said Crippen, Lawrence & Company, and Whereas, the said Crippen, Lawrence & Company have requested the said J. E. Putnam to convey the legal title to said lands and tenements to the said Stephen H. Standart, as assignee, as aforesaid.

Now, Therefore, This indenture made this 21st day of September, 1893, between the said J. E. Putnam of Salina, Kans., of the first part, and the said Stephen H. Standart, as assignee, of the second part, witnesseth: That the said party of the first part, in consideration of the sum of $1.00 and pursuant to the request as aforesaid, of the said Crippen, Lawrence & Company, has sold and by these presents, do- grant, bargain, sell and convey to the said party of the second part, his successors and assigns, all these tracts of land in Butler County, Kansas, to wit. The East ½ of North West ¼ and Lots 1 and 2 of Section 31, Township 26, Range 5, East, and other land, with appurtenances, and all the title and interest of the said party of the first part, therein, subject, however, to such incumbrances as appear of record, on said tracts and parcels of land respectively.

Acknowledged on September 21, 1893, before
C. L. WIGHT, [SEAL.]
Notary Public, Saline County, Kansas.

J. C. Hoyt & Co. Sheet No. 13. El Dorado, Kansas.

166 *Entry No.* 41.

Volume Misc. F, Page 518.

Crippen, Lawrence & Company

to

Stephen H. Standart, Assignee.

Certificate.

Dated October 14, 1893.
Filed September 26, 1900.

STATE OF COLORADO,
Arapahoe County, ss.

In the District Court in and for said County.

In the Matter of the General Assignment of CRIPPEN, LAWRENCE & COMPANY for the Benefit of their Creditors; Stephen H. Standart, Assignee.

G. S. Richards, of lawful age, being duly sworn on her oath, says that she was the Deputy District Clerk on the 23rd day of September, A. D., 1893, and is at this date the duly appointed and qualified Clerk of the District Court in and for the County of Arapahoe, and State of Colorado, that on the 14th day of October, 1893, Stephen H. Standart, who is personally well known to her, filed in the said office of the Clerk of the District Court, Arapahoe County aforesaid, his inventory and bond in the above entitled matter as assignee of the said Crippen, Lawrence & Company, which said bond was in the sum of $620,000.00, and was by said affiant in her official capacity, as Deputy Clerk of the said Court, duly filed and approved in said case, as required by law, which said bond now appears among the files in said cause in said office.

Affiant further says that the said Stephen H. Standart has duly qualified as assignee of the said Crippen, Lawrence and Company in the above entitled matter and is now acting as such assignee.

G. S. RICHARDS.

Subscribed and Sworn to before me this 1st day of March, A. D. 1897.

G. E. ENSEY, [No Seal.]
Notary Public.

(Endorsed: No. 19938.)

In the District Court: In Re Assignment of Crippen, Lawrence & Company. Affidavit of G. S. Richards.

Filed in District Court, Arapahoe Co., Colo., March 1, 1897.
G. S. RICHARDS,
Clerk.

STATE OF COLORADO,
County of Arapahoe, ss:

167 I, G. S. Richards, Clerk of the District Court of Arapahoe County, State aforesaid, do hereby certify the above and foregoing to be a true, complete and perfect transcript copy of an affidavit of G. S. Richards, Clerk of the District Court, had and filed in a certain cause, in said Court lately depending in Re, General Assignment of Crippen, Lawrence & Company, for the benefit of their creditors, as the same now remains on file in this office.

Witness my hand and seal of said Court, at the Court House in Denver County and State aforesaid, this 1st day of March, A. D., 1897.

[SEAL.]

G. S. RICHARDS,
Clerk,
By H. W. HANNUM,
Deputy Clerk.

Entry No. 42.

Volume 70, Page 520.

S. H. Standart, Assignee, Denver, Colorado,

to

Benjamin Jenkins, Saline County, Kansas.

Special Warranty Deed.

Dated August 31, 1894.
Filed September 25, 1894.
Consideration—$1,325.00.

Grant and convey: The East ½ of North West ¼ and Lots 1 and 2 of Section 31, Township 26, Range 5 East, containing 160 acres, more or less, with appurtenances in fee simple, free from all encumbrances, except a mortgage of $1,200.00. And said S. H. Standart, assignee, will warrant and defend the same unto the said second party, his heirs and assigns forever, against the lawful claims of all persons by, from or under him, or any of his assigns.

Acknowledged September 6, 1894, before
JAMES R. HICKS, [SEAL.]
Notary Public, Arapahoe County, Colorado.

J. C. Hoyt & Co. Sheet No. 14. El Dorado, Kansas.

Entry No. 43.

Volume 75, Page 318.

168 Benjamin Jenkins and Wife, Margaret E. Jenkins, of Saline County, Kansas,

to

J. J. Crippen, Trustee, Arapahoe County, Colorado.

Special Warranty Deed.

Dated July 11, 1896.
Filed July 17, 1896.
Consideration—$80.00.

Grant, bargain, sell and convey: The East ½ of North West ¼ and Lots 1 and 2 of Section 31, in Township 26, of Range 5 East, containing 160 acres, more or less, in Butler County, Kansas, with appurtenances in fee simple, free from all encumbrances, except a mortgage to Crippen, Lawrence & Company of $1,200.00. And said Jenjamin Jenkins and Margaret Jenkins will warrant and defend the same unto the said second party, his heirs and assigns forever, against the lawful claims of all persons, by, from or under them.

Acknowledged July 13, 1896, before
CHARLES J. PECK, [SEAL.]
Notary Public, Saline County, Kansas.

Entry No. 44.

Volume 99, Page 140.

J. J. Crippen, Trustee, and J. J. Crippen and Wife, H. F. Crippen, Arapahoe County, Colorado,

to

H. M. McConnell.

Warranty Deed.

Dated February 19, 1902.
Filed September 15, 1902.
Consideration—$1.00 and other.

Grant and convey: The East ½ of North West ¼ and Lots 1 and 2 of Section 31, Township 26, Range 5 East, in Butler County, Kansas, with appurtenances in fee simple, free from all encumbrances. And said parties of first part will warrant and defend the

same unto the said second party, his heirs and assigns forever, against the lawful claims of all persons.

Acknowledged April 3, 1902, before
JOHN C. FELDWISCH, [SEAL.]
Notary Public, Arapahoe County, Colorado.

169

Entry No. 45.

Volume 99, Page 233.

H. M. McConnell, a Single Man, Cook County, Illinois,

to

N. F. Frazier, Butler County, Kansas.

Warranty Deed.

Dated January 16, 1903.
Filed March 6, 1903.
Consideration—$1,150.00.

Grant and convey: Lots 1 and 2 and East ½ of North West ¼ of Section 31, Township 26, Range 5 East in Butler County, Kansas, with appurtenances in fee simble, free from all encumbrances. And said party of the first part will warrant and defend the same unto the said second party, his heirs and assigns forever, against the lawful claims of all persons.

Acknowledged January 16, 1903 before
WILLIAM CORNELIUS, [SEAL.]
Notary Public, Cook County, Illinois.

J. C. Hoyt & Co. Sheet No. 15. El Dorado, Kansas.

Entry No. 46.

Volume 90, Page 340.

N. F. Frazier and Wife, Emma Frazier, Butler County, Kansas,

to

J. H. Price, Butler County, Kansas.

Warranty Deed.

Dated July 6, 1903.
Filed September 25, 1903.
Consideration—$2,500.00.

Grant, bargain, sell, release, remise, convey and confirm: The North ½ of Section 31, Township 26, Range 5 East in Butler

County, Kansas with appurtenances. And said parties of the first part will warrant and defend the same unto the said second party, his heirs and assigns forever, against the lawful claims of all persons.

Acknowledged July 7, 1903, before

F. H. CRON, [SEAL.]
Notary Public, Butler County, Kansas.

170 *Entry No.* 47.

Volume 86, Page 195.

J. H. Price, a Single Man,

to

N. F. Frazier.

Mortgage.

Dated July 7, 1903.
Filed September 25, 1903.
Consideration—$1,500.00.

Convey and Mortgage: The North ½ of Section 31 Township 26, Range 5 East. This mortgage is given for a portion of the purchase price for said land, to secure the payment of the sum of $1,500.00. Clear of all incumbrances.

Acknowledged July 7, 1903, before

C. L. KING, [SEAL.]
Notary Public, Butler County, Kansas.

See Release at Next Entry.

Entry No. 48.

Volume 100, Page 122.

Emma Frazier, Executrix of the Estate of N. F. Frazier, Deceased.

to

J. H. Price.

Release.

Dated——
Filed January 16, 1908.
Consideration—Full Payment.

That the debt secured by mortgage upon the following described real property, situated in El Dorado Township in Butler County, Kansas, to-wit: The North ½ of Section 31, Township 26, Range

5 East, wherein J. H. Price, a single man *are* grantors and N. F. Frazier *are* grantees, dated July 7, 1903, Vol. 86, Page 195, in the office of the Register of Deeds of Butler County, Kansas, has been fully satisfied, in consideration of which said mortgage is hereby released.

Acknowledged January 16, 1908 before
F. H. CRON, [SEAL.]
Notary Public, Butler County, Kansas.

J. C. Hoyt & Co. Sheet No. 16. El Dorado, Kansas.

171 *Entry No.* 49.

Volume 99, Page 289.

J. H. Price, a Single Man, Butler County, Kansas.

to

W. J. Coleman.

Warranty Deed.

Dated July 7, 1903.
Filed September 30, 1903.
Consideration—$8,000.00.

Grant and convey: The North ½ of Section 31, Township 26, Range 5 East in Butler County, Kansas, with appurtenances in fee simple, free from all incumbrances, except a mortgage of $1,500. And said first party will warrant and defend the same unto the said second party, his heirs and assigns forever, against the lawful claims of all persons.

Acknowledged July 7, 1903, before
WALTER F. McGINNIS, [SEAL.]
Notary Public, Butler County, Kansas.

Entry No. 50.

Volume 103, Page 48

Wm. J. Coleman and A. M. Coleman, His Wife, Jackson County, Missouri,

to

William A. Disbrow.

Warranty Deed.

Dated September 23, 1903.
Filed September 30, 1903.
Consideration—$1.00 and other.

Grant, bargain, sell, convey and confirm: The North ½ of Section 31, Township 26, Range 5 East, with appurtenances in fee simple, free from all incumbrances, except an incumbrance of $1,500.00. And said W. J. Coleman will warrant and defend the same unto the said second party, his heirs and assigns, forever, against the lawful claims of all persons.

Acknowledged September 25, 1903 before
WILLIAM J. CUSTER, [SEAL.]
Notary Public, Jackson County, Missouri.

172 *Entry No.* 51.

Volume 118, Page 194.

W. A. Disbrow and Margaret Disbrow, His Wife, Jackson County, Missouri,

to

John W. Luttrell, Jackson County, Missouri.

Warranty Deed.

Dated October 27, 1908.
Filed October 31, 1908.
Consideration—$6,000.00.

Grant, bargain, sell and convey: The North ½ of Section 31, in Township 26, Range 5 East, with appurtenances in fee simple, free from all incumbrances. And said Grantors will warrant and defend the same unto the said second party, his heirs and assigns forever, against the lawful claims of all persons.

Acknowledged October 27, 1908, before
ARTHUR MILLER, [SEAL.]
Notary Public, Jackson County, Missouri.

J. C. Hoyt & Co. Sheet No. 17. El Dorado, Kansas.

Entry No. 52.

Volume 97, Page 168.

John W. Luttrell and Wife, Lizzie Luttrell,

to

C. L. King.

Mortgage.

Dated October 27, 1908.
Filed November 3, 1908.
Consideration—$2,500.00.

Convey and mortgage: The North ½ of Section 31, Township 26, Range 5 East, to secure the payment of the sum of $2,500.00. Clear of all incumbrances.

Acknowledged October 30, 1908, before

JOHN D. STROTHER, [SEAL.]
Notary Public, Jackson County, Missouri.

See Assignment at Next Entry.

173 *Entry No.* 53.

Volume 97, Page 168.

C. L. King

to

The Osage Fire Insurance Company.

Assignment.

Dated November 3, 1908.
Filed November 24, 1908.
Consideration—$2,508.33.

Margin.

In Consideration of $2,508.33 to me in hand paid, the receipt whereof is hereby acknowledged, I, C. L. King, the Mortgagee within named, do hereby assign and transfer to The Osage Fire Insurance Co., or its assigns, the note by the foregoing mortgage secured, and do hereby assign, transfer and set over unto the said The Osage Fire Insurance Co., or its assigns, all my right, title and interest to the lands and tenements in said Mortgage mentioned and described.

C. L. KING.

This Assignment was filed for entry and duly entered from original Mortgage.

L. D. HADLEY,
Register of Deeds.

See Assignment at Next Entry.

Entry No. 54.

Volume 110, Page 460.

The Osage Fire Insurance Company [SEAL], by J. B. Barrow, President,

to

C. L. King.

Assignment.

Dated February 27, 1912.
Filed November 4, 1913.
Consideration—$2,500.00.

Does hereby sell, assign, transfer, set over and convey unto C L. King, heirs and assigns, one certain mortgage dated October 27, 1908, executed by John W. and Lizzie Luttrell to C. L. King, upon the North ½ of Section 31, Township 26, Range 5 East in Butler County, Kansas, given to secure the payment of $2,500.00 and the interest thereon, recorded in Book 97, page 168, together with the note, debt and claim secured by said mortgage, and the covenants contained in said mortgage.

174 Acknowledged February 27, 1912 before
H. F. GUTHRIE, [SEAL.]
Notary Public, Shawnee County, Kansas.

See Release at Next Entry.

J. C. Hoyt & Co. Sheet No. 18. El Dorado, Kansas.

Entry No. 55.

Volume 110, Page 461.

C. L. King

to

John W. Luttrell and Wife, Lizzie Luttrell.

Release.

Dated November 3, 1913.
Filed November 4, 1913.
Consideration—Full Payment.

In consideration of full payment of the debt secured by a Mortgage made by John W. Luttrell and wife, to C. L. King, dated October 27, 1908, which is recorded in Book 97 of Mortgages, page 168

of the records of Butler County, Kansas, satisfaction of such mortgage is hereby acknowledged and the same is hereby released.

Acknowledged November 3, 1913, before
H. F. FERRY, [SEAL.]
Notary Public, Butler County, Kansas.

Entry No. 56.

Volume 101, Page 29.

John W. Luttrell and Wife, Lizzie Luttrell,

to

C. L. King.

Mortgage.

Dated October 27, 1908.
Filed November 6, 1908.
Consideration—$125.00.

Convey and mortgage: The North ½ of Section 31 in Township 26, Range 5 East in Butler County, Kansas, to secure the payment of the sum of $125.00. Clear of all incumbrances except a first mortgage of $2,500.00.

175 Acknowledged October 30, 1908, before
JOHN D. STROTHER, [SEAL.]
Notary Public, Jackson County, Missouri.

See Release at Next Entry.

Entry No. 57.

Volume 101, Page 29.

C. L. King

to

John W. Luttrell and Wife, Lizzie Luttrell.

Release.

Dated January 6, 1911.
Filed January 6, 1911.
Consideration—Full Payment.

Margin.

The debt secured by this mortgage has been paid in full and I hereby release the same of record, this 6th of January, 1911. Attest: L. D. Hadley, Register of Deeds.

C. L. KING.

Entry No. 58.

Volume 118, Page 231.

John W. Luttrell and Lizzie H. Luttrell, His Wife, Jackson County, Missouri.

to

Mattie Campbell, Jackson County, Missouri.

Warranty Deed.

Dated November 16, 1908.
Filed November 20, 1908.
Consideration—$6,400.00.

Grant, Bargain, Sell and Convey: All the right, title and interest in the North ½ of Section 31 in Township 26, Range 5 East in fee simple, free from all incumbrances, except a mortgage dated October 27, 1908 for $2,500.00 and a second mortgage for $125.00. And said Grantors will warrant and defend the same unto the said second party, her heirs and assigns forever, against the lawful claims of all persons.

Acknowledged November 16, 1908 before
JOHN D. STROTHER, [SEAL.]
Notary Public, Jackson County, Missouri.

176

Entry No. 59.

Volume 118, Page 415.

Mattie Campbell and H. A. Campbell, Her Husband, Jackson County, Missouri,

to

C. R. Nuttle, Butler County, Kansas.

Warranty Deed.

Dated February 13, 1909.
Filed February 16, 1909.
Consideration—$5,000.00.

Grant, Bargain, Sell and Convey: The North ½ of Section 31 in Township 26, Range 5 East, with appurtenances in fee simple, free from all incumbrances, except a first mortgage for $125.00. And said Mattie Campbell and H. A. Campbell will warrant and defend

the same unto the said second party, his heirs and assigns forever, against the lawful claims of all persons.

Acknowledged February 13, 1909 before
LESLIE E. BAIRD, [SEAL.]
Notary Public, Jackson County, Missouri.

Entry No. 60.

Volume 101, Page 529.

C. R. Nuttle and Wife, Ora G. Nuttle.

to

Clay Shriver.

Mortgage.

Dated February 20, 1911.
Filed February 20, 1911.
Consideration—$16,200.00.

Convey and Mortgage: The North ½ of Section 31, Township 26, Range 5 East (and other land) to secure the payment of One Note for $16,200.00 of this date, payable 5 years after date with 6 per cent interest, with privilege of paying $100.00 or any multiple thereof at any interest paying time. Clear of all incumbrances except a mortgage of $2,500.00.

Acknowledged February 20, 1911 before
RALPH P. TOLLE, [SEAL.]
Notary Public, Butler County, Kansas.

See Release at Next Entry.

177 *Entry No.* 60½.

Volume 101, Page 529.

Clay Shriver

to

C. R. Nuttle and Wife, Ora T. Nuttle.

Release.

Dated February 19, 1918.
Filed February 19, 1918.
Consideration—Full Payment.

Margin.

February 19, 1918, Received of C. R Nuttle, the within named Mortgagor, the sum of $16,200.00 in full satisfaction of the within Mortgage.
CLAY SHRIVER.

This Satisfaction was filed for Entry on the 19th day of February, 1918, and duly entered from Original Mortgage.

ZELLA LAMB,
Register of Deeds,
By ALICE FRIEND,
Deputy.

Entry No. 61.

Volume Misc. K, Page 363.

C. R. Nuttle and Wife, Ora F. Nuttle, El Dorado, Kansas,

to

B. G. Goble, Tulsa, Oklahoma.

Lease.

Dated June 6, 1914.
Filed July 20, 1914.
Consideration—$1.00.

Do grant, demise, lease and let unto the said second party, heirs, successors and assigns, for the sole and only purpose of mining and operating for oil and gas, etc., on -hat certain tract of land in Butler County, Kansas, to-wit: North ½ of Section 31, Township 26, Range 5 East, containing 320 acres, for a term of 5 years from this date and as long thereafter as oil or gas is produced from said land. The second party is to deliver to first parties ⅛ of all oil produced and saved from said premises, and to pay $50 per year for gas produced from any well.

Acknowledged June 6, 1914, before
WALTER F. McGINNIS, [SEAL.]
Notary Public, Butler County, Kansas.

See Assignment at Next Entry.

178 *Entry No.* 62.

Volume Misc. L, Page 210.

B. G. Goble, Tulsa, Oklahoma,

to

The Wichita Natural Gas Company.

Assignment.

Dated December 10, 1914.
Filed December 11, 1914.
Consideration—$100.00 and other.

Does hereby grant, bargain, sell, transfer, and set over unto The Wichita Natural Gas Compay, all of the right, title and interest of the said first party in and to a certain Lease, dated June 6, 1914, executed by C. R. Nuttle to B. G. Goble, covering North ½ of Section 31, Township 26, Range 5 East, containing 320 acres, more or less, in Butler County, Kansas (and other leases).

Acknowledged December 10, 1914, before
CHAS. W. HARVEY, [SEAL.]
Notary Public, Butler County, Kansas.

See Release in Next Entry.

Entry No. 63.

Volume Misc. N, Page 18.

Wichita Natural Gas Company (Seal), by Alfred J. Diescher, Vice President. Attest: R. C. Russum, Secretary,

to

C. R. Nuttle and Wife, Ora F. Nuttle.

Release.

Dated August 30, 1915.
Filed December 18, 1915.

The undersigned Wichita Natural Gas Company, a Corporation, Lessee of a certain Oil and Gas Lease, dated June 6, 1914, executed by C. R. Nuttle and Wife, Ora F. Nuttle, covering the North ½ of Section 31, Township 26, Range 5 East, Butler County, Kansas, being 320 acres, more or less, recorded in Book Misc. K, Page 363, Does hereby release all its rights, title and interest in and to said lease and authorizes the Register of Deeds of said County, to discharge the same of record.

Acknowledged August 30, 1915, before
HERMINE WELLMAN, [SEAL.]
Notary Public, Washington County, Oklahoma.

179 *Entry No.* 64.

Volume Misc. L, Page 195.

Oil and Gas Lease.

Agreement, Made and entered into the 16 day of December, 1915, by and between C. R. Nuttle and Ora T. Nuttle, his wife, of Butler Co., Kansas, party of the first part, lessors, and John H. Keith of Coffeyville, Ks., party of the second part, lessees.

Witnesseth, That the said party of the first part, for and in consideration of the sum of One Dollar to him in hand well and truly paid by the said party of the second part, the receipt of which is hereby acknowledged, and of the covenants and agreements hereinafter contained on the part of the party of the second part to be paid, kept and performed, ha- granted, demised, leased and let by these present- do grant, demise, lease and let unto the said second party, — heirs, executors, administrators, successors or assigns for the sole and only purpose of mining and operating for oil and gas, and of laying pipe lines, and building tanks, powers, station and structures thereon to produce and to take care of said products, all that certain tract of land situat-d in the County of Butler, State of Kansas, described as follows, to-wit: North ½ of Section 31, Township 26, Range 5, and South ½ of South West ¼ of Section 6, Township 27, Range 5 of Section —, Township —, Range —, and containing 400 acres, more or less. It is agreed that this lease

J. C. Hoyt & Co. Sheet No. 21. El Dorado, Kansas.

shall remain in force for a term of 2 years from this date and as long thereafter as oil or gas, or either of them is produced from said land by the party of the second party, their heirs, administrators, executors, successors and assigns. In consideration of the premises the said party of the second part covenants and agrees: 1st. To deliver to the credit of the first part, his heirs or assigns, free of cost, in the pipe line to which it may connect its wells, the equal one-eighth part of all oil produced and saved from the leased premises. 2nd. To pay the first part one-eighth delivered in line at well, for the gas from each well where gas only is found, while the same is being used off the premises, and the first party to have gas free of cost from any such well for all stoves and all inside lights in the principal dwelling house on said land during the same time by making his own connections with the well or lease line.
180 3rd. To pay to the first party for gas produced from any oil well and used off the premises at the rate of one-eighth.

The party of the second part agrees to complete a well on said premises within one year from the date hereof, or pay at the rate of One Dollar per acre, except as to such part of said premises as is surrendered as hereinafter provided for, for each additional year such completion is delayed from the time above mentioned for the completion of such well until a well is completed; said rental to be paid quarterly in advance; and it is agreed that the completion of such well shall be and operate as a full liquidation of all rent under this provision during the remainder of the term of this lease.

The party of the second part shall have the right to use, free of cost, gas, oil and water produced on said land for its operation thereon, except water from the wells of the first party, which may be used where supply permits. When requested by first party, the second party shall bury its pipe lines below plow depth. No well shall be drilled nearer than — feet to the house or barn on said premises. Second party shall pay for damages caused by — to grow-

ing crops on said land. The party of the second part shall have the right at any time to remove all machinery and fixtures placed on said premises, including the right to draw and remove c-sing. The party of the second part shall not be bound by any change in the ownership of said land until duly notified of any such change, either by notice in writing duly signed by the parties to the instrument of conveyance, or by receipt of the original instrument of conveyance, or duly certified copy thereof.

All payments which may fall due under this lease may be made by check directly to lessor or deposited by lessee to his credit in Farmers and Merchants National Bank, El Dorado, Ks. It is agreed that the lessee upon the payment of one Dollar shall have the right to surrender and cancel this lease in toto, or as to any part of the premises hereinbefore described as the lessee may elect upon filing in the proper recording office a duly executed release thereof and all payments and liabilities provided for herein shall cease and determine except as to such portions of the said premises that the lessee shall at his option elect to retain, provided that in the event any suit or action is brought in any court by the lessee to enforce this lease, then this clause providing for the surrender of this lease by the lessee, shall become inoperative immediately and concurrently with the commencement of such suit or action. This lease and all provisions herein, shall bind, and run in favor of the respective heirs, executors, administrators, successors and assigns of the parties hereto. Upon failure of the lessee to comply with conditions of this lease or to make any of the payments above provided for delay in completing a well on the date upon which the same become due, the 181 lessor shall have a right to declare a forfeiture of this lease if such payment be not made within thirty days after written notice to pay same.

In Witness Whereof, the parties hereto have set their hands and seals the day and year first above written.

C. R. NUTTLE. [SEAL.]
ORA T. NUTTLE. [SEAL.]

Acknowledged December 16, 1915, before
F. H. SCHOEB, [No Seal.]
Notary Public, Butler County, Kansas.

Filed for Record December 17, 1915.

Sheet No. 22.

Entry No. 65.

Volume Mis. Y, Page 417.

John H. Keith

and

C. R. Nuttle.

Contract.

Dated December 16, 1915.
Filed February 7, 1917.

Whereas, C. R. Nuttle and wife have this day executed an oil and gas mining lease to John H. Keith of Coffeyville, Ks., on lands being to them in the vicinity of White Switch, Butler Co., Ks., and is undergoing to assist the said Keith to procure other leases in the same community. In consideration of said assistance the said Keith hereby agrees to drill a well on the tract West of Walnut River to the first or second sands found in the wells North West of El Dorado and in the event they are found dry to drill if the Star drilling machine used will commonly drill it to the Augusta gas sand.

Said drilling to be paid for by the said Keith and in the event said well produces oil or gas in *a* paying quantities, to equip the same at his own expense. He is to be reimbursed for any and all expenditures so made out of the proceeds of oil or gas from said lease or leases and in the event said well is barren and any subsequent drilling on said land or any other lands leased in said vicinity in which both parties to this contract are jointly interested the ownership can of the lease thereon as hereinafter mentioned said Keith to be reimbursed for any drilling or equipment made on the lands of said Nuttle, said other lands and of the proceeds of any well or wells.

182 It is further provided that said Keith subject to above provision will assign to Nuttle the undivided one fourth of said lease or any lease he may get in said vicinity, said Nuttle to pay ¼ of the bonus thereof in the event they agree upon the amount of said bonus. It is further agreed that the same provision of this contract shall apply to the lands leased from said Nuttle and other persons through his instrumentality East of Walnut River in said vicinity.

It is the intention of this contract for said Keith to furnish the money to drill one well on each side of Walnut River as above mentioned and to be reimbursed out of any products from any well or wells found on any of said leases. For the purpose of avoiding confusing Keith to give to Nuttle statements showing his interest in any lease in which he may be instrumental in procuring for said Keith when the same is taken. It is understood and agreed that no lands shall be leased unless the title to the said lands are indefusible and are made by the owners themselves.

Given under our hands this 16th day of December, 1915.

JOHN H. KEITH.
C. R. NUTTLE.

Not Acknowledged.

Entry No. 66.

Volume Misc. U, Page 550.

C. R. Nuttle and Ora T. Nuttle, His Wife,

to

Carter Oil Company.

Right of Way.

Dated November 4, 1916.
Filed November 18, 1916.
Consideration—$800.00.

Grant and convey: To the Carter Oil Company, a corporation of the State of West Virginia, an easement or right of way abutting the following described tract of land, in Butler County, Kansas, to-wit: North West ¼ of North West ¼ of Section 31, Township 26, Range 5 East, containing 40 acres, more or less, for the following purposes: To construct, maintain, operate, repair and remove at any place abutting said land, excepting where buildings now stand thereon, a pipe line of whatever dimensions to convey oil, gas or water, all such oil and gas pipe lines to be buried below plow depth, upon written demand of grantors served on grantee at its office at Tulsa, Oklahoma. To Have and to Hold the easement or right of way hereby granted to and unto the grantee, its successors and assigns for the term of 10 years, and as long thereafter as the grantee may desire to maintain said pipe line by virtue hereof, with
183 full right in the grantee to construct, operate and maintain, telephone and telegraph lines in connection with said pipe line.

Acknowledged November 4, 1916, before
F. H. SCHIOEB, [SEAL.]
Notary Public, Butler County, Kansas.

J. C. Hoyt & Co. Sheet No. 23. El Dorado, Kansas.

Entry No. 67.

Volume Misc. L, Page 195.

John H. Keith

to

C. R. Nuttle and Ora T. Nuttle.

Release.

Dated June 22, 1917.
Filed June 22, 1917.
Consideration—Value Received.

Margin.

For Value, I hereby release the South ½ of North West ¼ of Section 31 and South ½ of Lot 1 of North West ¼ of Section 31, Township 26, Range 5 East (and other land) from this lease, this 22 day of June, 1917.

JOHN H. KEITH.

Attest:
ZELLA LAMB,
Register of Deeds.

Entry No. 68.

Volume Misc. 29, Page 463.

Oil and Gas Lease.

Agreement, Made and entered into the 29th day of August, 1917, by and between Chas. R. Nuttle and Ora T. Nuttle, his wife, of El Dorado, Kansas, party of the first part, herein after called lessor (whether one or more) and John H. Keith and John J. McPherson, party of the second part, lessee, Witnesseth, That the said lessor, for and in consideration of One and No-100 Dollars, cash in hand paid, receipt of which is hereby acknowledged and of the covenants and agreements hereinafter contained on the part of lessee to be paid, kept and performed has granted, demised, leased and let and by these presents does grant, demise, lease and let unto the said lessee, for the sole and only purpose of mining and operating for oil and gas, laying pipe lines, and building tanks, powers, stations and structures thereon to produce, save and take care of said products, all that certain tract of land situate in the County of Butler, State of Kansas, described as follows, to-wit: S. ½ of Lot 1, Lot 2 and S. E. ¼ of N. W. ¼, otherwise described as S. ½ of N. W. ¼ of N. W.
184 ¼ and S. ½ of N. W. ¼ of Section 31, Township 26, Range 5 East, being all the land owned by the Grantors herein not

now held by John H. Keith or his assigns in Section 31, Township 26, Range 5, and containing 100 acres, more or less.

It is agreed that this lease shall remain in force for a term Five years from this date, and as long thereafter as oil or gas, or either of them, is produced from said land by the lessee.

In consideration of the premises the said lessee covenants and agrees: 1st. To deliver to the credit of lessor, free of cost, in the pipe line to which he may connect his wells, the equal one-eighth part of all oil produced and saved from the leased premises. 2nd. To pay the lessor one-eighth part or portion each year in advance, for the gas from each well where gas only is found, while the same is being used off the premises, and lessor to have gas free of cost from any such well for all stoves and all inside lights in the principal dwelling house on said land during the same time by making his own connections with the wells at his own risk and expense. 3rd. To pay lessor for gas produced from any oil well and used off the premises at the rate of one-eighth part or portion per year for the time during which such gas shall be used, said payments to be made each three months in advance.

If no well be commenced on said land on or before the 29th day of November, 1917, this lease shall terminate as to both parties, unless the lessee on or before that date shall pay or tender to the lessor, or to -he lessor's credit in the Farmers' and Merchants' National Bank at El Dorado, Kansas, or its successors, which shall continue as the depositary regardless of changes in the ownership of said land, the sum of One Hundred and No-100 Dollars, which shall operate as a rental and cover the privileges of deferring the commencement of a well for twelve months from said date. In like manner and upon like payments or tenders the commencement of a well may be further deferred for like period of the same number of months successively. And it is understood and agreed that the consideration first recited herein, the down payment, covers not only the privileges granted to the date when said first rental is payable as aforesaid, but also the lessee's option of extending that period as

J. C. Hoyt & Co. Sheet No. 41. El Dorado, Kansas.

aforesaid, and any and all other rights conferred.

Should the first well drilled on the above described land be
185 a dry hole, the-, and in that event, if a second well is not commenced on said land within twelve months from the expiration of the last rental period which rental has been paid, this lease shall terminate as to both parties, unless the lessee on or before the expiration of said twelve months shall resume the payment of rentals in the same amount and in the same manner as hereinbefore provided. And it is agreed that upon the resumption of the payment of rentals as above provided, that the last preceding paragraph hereof, governing the payment of rentals and the effects thereof, shall continue in force just as though there had been no interruption in the rental payments.

If said lessor owns a less interest in the above described land than the entire and undiv-ded fee simple estate therein, then the royalties and rentals herein provided shall be paid the lessor only in proportion which his interest bears to the whole and undivided fee. Lessee shall have the right to use free of cost, gas, oil, and water produced on said land for its operations thereon, except water from wells of lessor, and lessee shall also have the free use of the house and barn now upon the land, and any improvements placed upon said buildings shall belong to lessor. When requested by lessor, lessee shall bury its pipe lines below plow depth. No well shall be drilled nearer than 200 feet to the house or barn now on said premises, without the written consent of the lessor. Lessee shall pay for damages caused by its operations to growing crops on said land. Lessee shall have the right at any time to remove all machinery and fixtures placed on said premises, including the right to draw and remove casing.

If the estate of either party hereto is assigned, and the privilege of assigning in whole or in part is expressly allowed—the covenants hereof shall extend to their heirs, executors, administrators, successors or assigns, but no change in the ownership of the land or assignment of rentals or royalties shall be binding on the lessee until after the lessee has been furnished with a written transfer or assignment or a true copy thereof; and it is hereby agreed in the event this lease shall be assigned as to a part or as to parts of the above described lands and the assignee or assignees of such part or parts shall fail or make default in the payment of the proportionate part of the rents due from him or them, such default shall not operate to defeat or affect this lease in so far as it covers a part or parts of said lands upon which the said lessee or any assignee thereof, shall make due payment of said rentals.

Lessor hereby warrants and agrees to defend the title to the lands herein described, and agrees that the lessee shall have the right at any time to redeem for lessor, by payment, any mortgages, taxes or other liens on the above described lands, in the event of de-
186 fault of payment by lessor, and subrogated to the rights of the holder thereof.

It is agreed that in case a well is drilled upon said land that will produce 500 barrels of oil per day, that lessee shall pay to lessor the further sum of $6,000.00 out of one-half of first oil p[illegible]ced. Second party agrees to protect the lines of said premises at all times, by drilling off-set wells and to protect the premises from the drainage of oil and gas therefrom by reason of operations on adjoining lands. In the event oil or gas is found in paying quantities second party agrees to commence operations with reasonable diligence and put down such additional wells as may be reasonably necessary to produce oil and gas from said premises without unnecessary delay.

In testimony whereof we sign, this the 20th day of August, 1917.

CHAS. R. NUTTLE. [SEAL.]
ORA T. NUTTLE. [SEAL.]

Acknowledged on August 29, 1917, before
C. C. ZIMMERMAN, [SEAL.]
Notary Public, Butler County, Kansas.

Filed for Record on September 3, 1917.

J. C. Hoyt & Co. Sheet No. 42. El Dorado, Kansas.

Entry No. 69.

Volume Misc. 29, Page 360.

John H. Keith, C. M. Ball, and P. G. Keith, Coffeyville, Kansas,

to

Atlas Petroleum Company, Kansas City, Missouri.

Contract.

Dated June 14, 1917.
Filed September 5, 1917.
Consideration—$1.00.

That Whereas, the parties of the first part are the owners of an oil and gas mining lease dated December 16, 1915, executed by C. R. Nuttle and Ora T. Nuttle, his wife, of Butler County, Kansas, covering the following described real estate and premises situate in Butler County, State of Kansas, to-wit: The North ½ of Section 31, Township 26, Range 5, and other land, and are desirous of having the same tested for oil and gas.

And Whereas, the said parties of the first part have executed an assignment wherein they sell, assign, transfer and convey to
187 and unto the party of the second part, its successors and assigns, an undivided one-half interest in and to said oil and gas mining lease and leasehold estate in so far as the same covers and appertains to the following described real estate and premises, to-wit: The North East ¼ of Section 31, Township 26, Range 5, and have placed said assignment in the Condon National Bank of Coffeyville, Kansas, to be held in escrow by said bank subject to the terms of this contract.

Now, Therefore, for and in consideration of the sum of One Dollar, the receipt of which is hereby acknowledged and the covenants and agreements hereinafter set forth and contained to be kept and performed by the parties hereto, the parties agree as follows to-wit: The parties of the first part hereby agree to sell, assign, transfer and deliver to and unto the party of the second part, its successors and assigns, an undivided one-half interest in and to the above described oil and gas mining lease in so far as the same appertains to and covers the North East ¼ of Section 31, Township 26, Range 5. In consideration of which the party of the second part agrees to drill and fully equip one well upon the last above described land, and it being agreed that to drill and fully equip one well does not

include the installation of a pumping or power plant. Said well shall be drilled to a depth of at least 2,715 feet, unless oil is found in paying quantities at a lesser depth, and below 2,600 feet, it being agreed that the big pay sand in the locality of the above described land is found at a point below 2,600 feet and said second party agrees to drill said well at all events to a depth of at least 2,600 feet or to the point where the big pay sand is found in the vicinity of said land; it being understood that the intention of this contract is to test said land for oil in the sand usually found between 2,600 and 2,700 feet in the vicinity of said land.

It is further agreed that said well shall be drilled and equipped for pumping at the exclusive cost and expense of said second party, but it is not the intention of this contract that said second party install and pay for at its expense a pumping or power plant; it being further agreed that after the completion of said well as herein agreed that said second party shall own a full undivided one-half interest in and to said lease and leasehold estate, and that second party shall pay only one-half of the entire cost and expense of installing pumping or power plant for above well and only one-half of the entire cost and expense of drilling and equipping other wells and installing necessary power and pumping plants upon said lease. It is further agreed that second party shall receive a full one-half of all profits earned and shall pay an equal one-half of all losses sustained. It is further agreed that said lease and leasehold estate shall be under the joint control and management of the parties hereto, both in the development and operation of the same. It is further agreed that in the event oil is found, that either party may continue the
188 drilling of wells and the development of said lease diligently and continuously until same shall be fully developed and it is agreed that each party shall pay their proportionate part of

J. C. Hoyt & Co. Sheet No. 43. El Dorado, Kansas.

the cost of the same, and the party or parties doing said drilling and developing shall have the right to collect from any other person or persons, firm or corporation, owning an interest in this lease, their proportionate part of the cost of the same.

It is further agreed that the above described oil and gas mining lease is for a period of time running until December, 1917, and as long thereafter as oil or gas is found thereon, and that time is the essence of this contract. It is further agreed that the second party shall commence the drilling of said well within twenty days from this date unless unavoidably delayed, and shall proceed uninterruptedly and diligently from its commencement—until the completion of the same, and that said second party shall have a well completed thereon on or before the first day of December, 1917, unless the completion of the said well is prevented by some act beyond the control of said second party. It is further agreed that upon the completion of said well by said second party herein that the assignment executed by said first party and held by the Condon National Bank, shall be delivered to the second party by said Bank, and an affidavit

by the contractor drilling said well that said well is completed, file with said Bank shall be sufficient authority to said Bank to deliver the assignment to said second party.

The first party further agrees to warrant that they have a good marketable and valid title to said oil and gas mining lease aforesaid and that they have good right and authority to sell, assign and deliver to the second party herein a full undivided one-half interest in and to said oil and gas mining lease; that said first party has furnished an abstract of title to the second party, and in the event any defects in title are shown in said abstract that said first party shall immediately cure any and all defects.

In Testimony Whereof, the parties hereto have set their hands the day and year first above written.

JOHN H. KEITH.
C. M. BALL.
P. G. KEITH.
ATLAS PETROLEUM COMPANY,
By JOHN J. McPHERSON,
President.

189 Attest:
[SEAL.] W. H. McCRUM,
Secretary,
By JOHN J. McPHERSON,
President

Acknowledged by J. H. Keith, C. M. Ball and P. G. Keith on July 3, 1917, before

E. M. TODD, [SEAL.]
Notary Public, Montgomery County, Kansas.

Acknowledged by John J. McPherson, as President of Atlas Petroleum Company, on July 17, 1917, before

BENJAMIN E. BUSH, [SEAL.]
Notary Public, Jackson County, Missouri.

Entry No. 70.

Volume Misc. 32, Page 80.

John H. Keith and John J. McPherson

to

C. M. Ball, Isadore Littman, and P. G. Keith.

Assignment.

Dated September 7, 1917.
Filed September 20, 1917, at 8 o'clock a. m.
Consideration—$1.00.

Know all Men by These Presents, That whereas on the 29th day of August, 1917, Charles R. Nuttle and Nora T. Nuttle, his wife, of El Dorado, Kansas, executed with John H. Keith of Coffeyville, Kansas, and John J. McPherson of Kansas City, Missouri, an oil and gas mining lease upon the following described land situate in Butler County, Kansas, to-wit: The South ½ of Lot 1, Lot 2, and the South East ¼ of the North West ¼, otherwise described as the South Half of the North West ¼ of the North West ¼, and the South ½ of the North West ¼, all of Section 31, Township 26, Range 5, and being all of the land owned by the grantor not now held by John H. Keith or his assignors, in said Section 31, Township 26, Range 5, and containing one hundred acres, more or less.

And Whereas, the said John H. Keith and John J. McPherson each own- an undivided one-half interest in said lease, and they are desirous of selling an interest in the same. Now, Therefore, for and in consideration of the sum of One Dollar, the receipt of which is

J. C. Hoyt & Co. Sheet No. 44. El Dorado, Kansas.

hereby acknowledged, and other good and valuable consideration, we do hereby sell, assign, transfer and convey to and unto C. M.
190 Ball, of Coffeyville, Kansas, an undivided one-twelfth interest in and to said lease; to Isidore Littman, of Coffeyville, Kansas, an undivided one-twenty-fourth interest in and to said lease to P. G. Keith of Coffeyville, Kansas, an undivided one-twenty-fourth interest in and to said lease, all of which so transferred being out of the undivided one-half interest held and owned by the said John H. Keith.

And furthermore, and in consideration of the sum of One Dollar and other good and valuable consideration, the receipt of which is hereby acknowledged, we do hereby sell, assign, transfer and convey to and unto Atlas Petroleum Company, of Kansas City, Missouri, its successors and assigns, an undivided one-half interest in and to said lease, same being the entire interest owned by the said John J. McPherson. To Have and to Hold, the same to and unto the said C. M. Ball, P. G. Keith, Isadore Litman, Atlas Petroleum Company, their successors and assigns according to the terms and conditions of said lease, the said C. M. Ball, P. G. Keith, Isadore Litman and Atlas Petroleum Company to perform all the conditions and covenants mentioned in said lease. And we hereby covenant that we are the lawful owners and holders of said oil and gas mining lease and same is free from all encumbrances, and that we have good right and authority to sell and assign the same.

In testimony whereof, We have hereunto set our hands and seals this 7th day of September, A. D. 1917.

JOHN H. KEITH.
JOHN J. McPHERSON.

Acknowledged September 19, 1917, by John H. Keith, before
MAMIE A. COCHRAN, [SEAL.]
Notary Public, Montgomery County, Kansas.

Acknowledged September 7, 1917, by John J. McPherson before
BENJAMIN E. BUSH, [SEAL.]
Notary Public, Jackson County Missouri.

Entry No. 71.

Volume Misc. 32, Page 84.

J. H. Keith, C. M. Ball, and P. G. Keith

to

Atlas Petroleum Company, a Corporation.

Assignment.

Dated June 14, 1917.
Filed September 20, 1917, at 8.00 o'clock A. M.
Consideration—$1.00 and other.

Know all Men by these Presents: That, Whereas, J. H. Keith, C. M. Ball and P. G. Klein, first parties hereinafter designed as "Assignor," are owners of a certain lease for oil and gas mining purposes executed on the 16th day of December, A. D. 1915, by
191 C. R. Nuttle and Ora T. Nuttle, his wife, covering the following described lands in Butler County, State of Kansas, to-wit: The North ½ of Section 31, Township 26, Range 5, and the West ¼ of the South West ¼ of Section 6, Township 27, Range 5, containing 400 acres, which lease is of record with the Register of Deeds of Butler County, State of Kansas, and recorded in Volume Miscellaneous L, at Page 195 thereof.

Now, Therefore, for and in consideration of the sum of One Dollar in hand paid, receipt of which is hereby acknowledged, and other valuable considerations, the assignor does hereby grant, Bargain, sell, transfer, assign and deliver to the Atlas Petroleum Company, a corporation organized and existing under the laws of the State of Oklahoma, its successors and assigns, hereinafter designated as "Assignee," the following described property, to-wit: 1st. An undivided one-half interest in and to the lease above described and the leasehold estate thereby created in so far only as said lease covers and relates to the following described tract of land covered thereby, to-wit: The

North East ¼ of Section 31, Township 26, Range 5, containing 160 Acres, more or less, in Butler County, Kansas, and for the consideration aforesaid the assignor for himself, his heirs, executors, administrators and successors, hereby covenants to and with the assignee, its successors and assigns, that the assignor is the owner of valid title to the lease for oil and gas mining purposes above described according to the terms and conditions therein set forth, and does hereby warrant the title to the same to the said assignee, its successors and as-

signs; that all rentals and rolayties due under the terms of said lease to the date of this assignment have been paid and that said lease and leasehold estate hereby assigned, sold and delivered, are free from all liens, incumbrances, taxes and indebtedness of whatsoever nature.

In Testimony Whereof, the parties hereto have hereunto set their hands and seal this 14th day of June, 1917.

J. H. KEITH,
C. M. BALL,
P. G. KEITH,
Assignors.

192 Acknowledged June 16th, 1917, before
E. M. TODD, [SEAL.]
Notary Public, Montgomery County, Kansas.

Entry No. 72.

Volume Misc. Y, Page 417.

John H. Keith
to
C. R. Nuttle.

Release.

Dated June 22, 1917.
Filed June 22, 1917.

Margin.

June 22, 1917. We hereby release this Contract of record and authorize the Register of Deeds to discharge the same of record.
JOHN H. KEITH.
C. R. NUTTLE.

Attest:
ZELLA LAMB,
Register of Deeds.

Entry No. 73.

Volume 29, Page 16.

John H. Keith
to
C. M. Ball and P. G. Keith.

Assignment.

Dated June 29, 1917.
Filed June 30, 1917.
Consideration—$1.00.

Know All Men by These Presents, That for and in consideration of the sum of One Dollar, the Receipt of which is hereby acknowledged, I hereby sell, transfer and assign unto C. M. Ball, and P. G. Keith, both of Coffeyville, Kansas, the undivided one-sixth each, in the following oil and gas leases, on land located in Butler County, Kansas: The undivided one-sixth interest each in an oil and gas lease, executed by C. R. Nuttle and wife, upon the North East ¼ and N. ½ of Lot 1, all N. W. ¼ of Section 31, Twp. 26, R. 5, and W. ½ of S. E. of Section 9, Twp. 27, R. 5, (and other leases).

Acknowledged June 29, 1917 before

E. M. TODD, [SEAL.]

Notary Public, Montgomery County, Kansas.

J. C. Hoyt & Co. Sheet No. 46. El Dorado, Kansas.

193 In the District Court of Butler County, Kansas.

No. 1679.

THE TRAVELERS' INSURANCE COMPANY, Plaintiff,

vs.

JOHN PIERCE, MARY M. PIERCE, JOHN J. DONNELLY, and A. D. WEAR, Defendants.

Petition.

December 23, 1882, Plaintiff by its Attorney files its duly verified petition in the above entitled action and says:

First. That it is and has been for five years last past a corporation duly incorporated under the laws of Connecticut duly authorized to loan money, receive notes and mortgages therefor.

2. Plaintiff complains and says that heretofore, to-wit; on the first day of September, 1880, at Butler County, Kansas, the said John Pierce and Mary M. Pierce, Defendants, for a valuable consideration, made, executed and delivered unto this plaintiff a certain promissory note in writing of that date, with ten per cent interest, coupon notes of like date thereto annexed, whereby they undertook and promised to pay unto the order of said plaintiff in five years after date of said note and coupons, the sum of $300.00, with interest at the rate of 8 per cent per annum, payable semi-annually, on the 1st day of March and September, in each year, according to the tenor and effect of Ten interest notes thereto attached, principal and interest, payable at the Mechanic Saving Bank, Hartford, Connecticut.

3. And the said defendant further undertook and promised to pay interest on any unpaid installments of interest and upon the principal after the same should become due, at the rate of twelve per cent per annum, and if default should be made in the payment

of any installment of interest thereon, then, and in that case the whole amount of said prnicipal and interest should become immediately due and payable. A copy of said note and the unpaid interest notes is hereto attached, and made a part of this petition.

4. And the said plaintiff further represents and shows to the Court that it is the owner and holder of said note, and each of the unpaid interest coupons belonging thereto, and that notwithstanding the said promise and undertaking of said John Pierce and Mary M. Pierce to pay the said interest notes maturing on the 1st day of September, 1881, and the 1st day of March, 1882, and the 1st day of September, 1882, they made default in such promised payments, and the said default having continued until this day, from the maturity of said interest coupons, the amount now due on the coupons is $36.00 with interest at 12 per cent from March 1st, 1882.

194 5. And the plaintiff further says that the said John Pierce and Mary M. Pierce for the purpose of securing the payment of said sums of money when the same should become due and payable, did, on the 1st day of September, 1880, make, execute and deliver unto the said plaintiff, a certain mortgage deed, by which they did grant, bargain, sell, convey and confirm unto the said plaintiff forever, the following described real estate situate, lying and being in the county of Butler and State of Kansas, as follows, to-wit: North East ¼ of Section 31, in Township 26, South of Range 5, East of the 6th P. M. And in said mortgage said defendants, John Pierce and Mary M. Pierce waived appraisement of said land. Which said mortgage deed was, on the 13th day of October, 1880, at the hour of 5:20 o'clock P. M., duly recorded in the office of the Register of Deeds of Butler County, State of Kansas, in Book Q of Mortgages, at page 165, a copy of which mortgage deed and all the endorsements thereon is hereunto attached, and made a part of this petition. And the plaintiff further says that it was stipulated in said mortgage deed, that if the maker of said note shall fail to pay, or cause to be paid, any part of said sums of money, as the same

become due and payable, either principal or interest, according to the tenor and effect of the said note and coupons, or to conform or to comply with any of the conditions or agreements in said note or mortgage deed, the whole sum of money thereby secured, shall, at the option of the legal holder or holders thereof, immediately become due and payable without notice.

6. And the plaintiff further says that the defendants, John J. Donnelly and A. D. Wear *has* or claims to have an interest in said mortgaged premises, the precise nature of which claim or interest is unknown to this plaintiff; but said plaintiff avers that whatever lien, claim or interest the said defendant- may have, or claim to have in said premises, the same are junior and inferior to the lien of the plaintiff herein.

7. Plaintiff avers that the conditions of said mortgage deed have been broken, in this, that the said defendants, John Pierce and Mary M. Pierce have failed and neglected to pay, or cause to be paid, the installment of interest due upon said note on the 1st day of September, 1881, and the 1st day of March, 1882, and the 1st day of September, 1882; and said default having continued to this day, the said plaintiff has elected to declare the whole amount of said
195 note and the interest thereon to be due and payable, to-wit, $336.00 with 12 per cent interest from September 1st, 1880, to plaintiff from defendants, John Pierce and Mary M. Pierce.

8. Said defendants failed to pay the taxes upon said land for the year 1882 and this plaintiff was compelled to and did pay the same, the amount of $16.40. Wherefore, the plaintiff prays judgment against the said defendants, John Pierce and Mary M. Pierce for the said sum of $336.00 with interest at 12 per cent from September 1st, 1880 and the costs of this suit; and that said mortgage deed be foreclosed, and that said judgment be declared to be a first lien upon said mortgaged premises; and unless said principal sum of money and the interest thereon, and the accruing interest, and costs made herein be paid within a time to be fixed by the court, that an order of sale issue to the sheriff of said County of Butler, State of Kansas, commanding him to sell according to law, without appraisement, the lands mentioned in said mortgage deed, to-wit: The North East ¼ of Section 30 in Township 26, South of Range 5 East and apply the proceeds of said sale to the payment of the said principal sum due, with the interest thereon, and costs of this suit, and that the claim or interest of the said defendant, John J. Donnelly and A. D. Wear, be adjudged and decreed to be junior and inferior to the lien of said plaintiff's mortgage deed; and the said defendants and each of them, and all persons claiming, or to claim, under, by or through them, or either of them, be forever foreclosed, and barred of all right, title, interest or claim, in and to the said mortgaged premises, or any part thereof, and for such other relief as the plaintiff may in equity be entitled to. December 23, 1882, was filed Affidavit for Publication.

Affidavit for Publication.

A. L. Redden, Attorney for Plaintiff, being duly sworn, on his oath deposes and says: That he is the attorney for the plaintiff in the above entitled action; that said plaintiff has commenced an action in the District Court of Butler County, Kansas, against the said defendants, John Pierce, Mary M. Pierce, John J. Donnelly and A. D. Wear; that the object of said action is to foreclose a mortgage upon the following described real estate, situate, lying and being in said County and State, to-wit: North East ¼ of Section 31 in Township 26, South of Range 5 East of 6th P. M., and to sell said real estate under said forecloure. And the said defendants, John J. Donnelly and A. D. Wear claims an interest or lien therein, and the relief demanded consists in wholly excluding said defendants, John J. Donnelly and A. D. Wear from any interest or lien therein;

and that the said defendants, John Pierce, Mary M. Pierce, John J. Donnelly and A. D. Wear are each non-resident of the State of Kansas, and that service of summons cannot be made on them
196 in the State of Kansas.

Subscribed and Sworn to December 23, 1882, before
C. N. JAMES, [SEAL.]
Clerk of District Court Butler County, Kansas.

J. C. Hoyt & Co. Sheet No. 25. El Dorado, Kansas.

Publication Notice.

January 13, 1883, was filed Notice of Publication and Proof of Publication, printed copy of which is as follows:

To the Defendants, John Pierce, Mary M. Pierce, John J. Donnelly, and A. D. Wear, in the above entitled action:

You, and each of you, are hereby notified that you have been sued by the plaintiff in the above action; that said plaintiff filed his petition against you in said action in the District Court of Butler County, Kansas, on the 23rd day of December, 1882, and that you must answer said petition on or before the 8th day of February, 1883, or the allegations therein will be taken as true and judgment rendered accordingly against John Pierce and Mary M. Pierce for $316.50, with interest thereon at the rate of twelve per cent, per annum from the first day of September, 1880, and the costs of suit, and for the foreclosure of a certain mortgage executed by the said defendants, to secure the payment of said sum of money on the following described real estate, situated in Butler County, Kansas, to-wit: The North East ¼ of Section 31 in Township 26, South of Range 5 East of the 6th P. M. And in case said judgment is not paid within six months from rendition thereof, that the said mortgaged premises be sold according to law, without appraisement, and the proceeds arising from such sale applied to the payment of said judgment, interest and costs, and also judgment will be rendered against the defendants, John Donnelly and A. D. Wear, adjudging and decreeing their estate, title and interest in and to the said mortgaged premises to be junior and inferior to the mortgage lien of said plaintiff, and upon the completion of said sale, that the said defendants, and every of them, and all persons claiming under them, or either of them, be forever barred and foreclosed of, and from all interest, claim or title in and to said mortgaged premises, or any part thereof, and such other relief as the plaintiff may be entitled to.

A. L. REDDEN,
Attorney for Plaintiff.

Attached to the foregoing printed Notice is an affidavit of J. M. Satterthwaite, printer and publisher of the El Dorado "Press," a

newspaper printed and published at El Dorado, Butler
197 County, Kansas, and of general ciculation in said county, and that a notice of which the annexed is a true copy, was printed and published in said paper for three consecutive weeks, commencing on the 28th day of December, 1882, which the same he does under the pains and penalties of perjury.

Subscribed and sworn to January 13, 1883, before
V. P. MOONEY, [SEAL.]
Clerk of the District Court, Butler County, Kansas.

Judgment.

Jr. "E," Page 411.

May 1, 1883, this cause came on for trial. Plaintiff appeared by A. L. Redden, its attorney, and the defendants failed to appear. A jury being waived the court proceeded to the trial of the cause and from the evidence offered finds that a summons could not be served on the defendants in this State, that they were non-residents of this State, and that they had due notice of the filing of plaintiff's petition by publication printed and published in the El Dorado Press, a newspaper printed and published in Butler County, Kansas, which said publication commenced on the 28th day of December, 1882 and was continued for three consecutive weeks, thereafter the answer day being at least forty-one days from the first publication, that proof of such publication has been made and filed and hereby approved, and that said defendants have neither answered or demurred to the petition of said plaintiff and are in default and that the allegations in said petition are true. And the court futher finds that there is due, owing and unpaid from said defendants, John Pierce and Mary M. Pierce, to said plaintiff, The Travelers' Insurance Company upon said note sued on herein the sum of $443.52 and that said note draws interest at the rate of 12 per cent per annum and that the said defendants, John Pierce and Mary M. Pierce did on the first day of September, 1880, execute and deliver to said plaintiff The Travelers' Insurance Company, to secure the payment of said note a certain mortgage deed conveying to said Travelers' Insurance Company the plaintiff herein certain lands and tenements situate in the County of Butler and State of Kansas, described as follows: The North East ¼ of Section 31 in Township 26, South of Range 5 East of 6th P. M. That in said note and mortgage said defendants, John Pierce and Mary M. Pierce waived appraisement and that said defendants, John J. Donnelly

J. C. Hoyt & Co. Sheet No. 26. El Dorado, Kansas.

and A. D. Wear claim an interest in said land and that such
198 interest is inferior and subordinate to plaintiff's mortgage. It is therefore considered, ordered and adjudged by the court that the plaintiffs, The Travelers' Insurance Company have and recover of the defendants, John Pierce and Mary M. Pierce, the sum of

$443.52, with interest at 12 per cent per annum from this date, that being the rate specified in the note sued on, and the costs of this suit taxed at $19.10. And it is further ordered, adjudged and decreed that the said defendants, John Pierce, Mary M. Pierce, John J. Donnelly and A. D. Wear, and all persons claiming under them or any of them subsequent to the first day of September, 1880, be and are hereby barred and foreclosed of all right, claim, lien and equity of redemption in the said mortgaged premises and if this judgment, interest and cost be not paid within six months from this date an order of sale shall be issued to the sheriff of Butler County, Kansas, to sell at public sale without appraisement the above mortgaged premises to-wit: The North East ¼ of Section 31, in Township 26, South of Range 5 East of the 6th P. M., situate in the County of Butler and apply the proceeds of said sale to the payment first to the costs of this suit; second, to the payment of this plaintiff's judgment; third, whatever balance then remains to be paid to the defendants.

Order of Sale.

November 16, 1883, Order of Sale issued under Seal of the Court directed to the sheriff of Butler County, Kansas, which recites The State of Kansas, to the Sheriff of Butler County, in said State, Greeting: Whereas, The Travelers' Insurance Company on the 1 day of May, 1883, obtained Judgment in the District Court of the State of Kansas, sitting in and for Butler County, against John Pierce and Mary M. Pierce for the sum of $443.52 debt, and also for the further sum of $19.10 as costs in this behalf expended, together with interest at the rate of 12 per cent. per annum from the 1 day of May, 1883 and whereas by a decree of said court the following described property, to-wit: The North East ¼ of Section 31 in Township 26 South of Range 5 East, 6th P. M. in Butler County, Kansas, was charged with the payment of said debt, interest and costs and was by a decree of the said court ordered to be sold without appraisement. Now, therefore, you are commanded to cause the property above described to be advertised and sold according to law without appraisement and from the proceeds of such sale pay first the costs and expenses of this suit and accruing cost; second, the amount of the judgment herein in favor of plaintiff with accrued interest and the residue, if any, you will pay to hold subject to the order of the court. And make return of this order with your certificate thereon showing the manner you have executed the same, within sixty days from the date hereof.

199 *Proof of Publication.*

December 31, 1883, was filed Proof of Publication, printed copy of which omitting the caption is in words and figures as follows: By virtue of an Order of Sale issued out of the Eighteenth Judicial District Court in and for Butler County, Kansas, and to the Sheriff of said county directed, I will on Monday, the 24th day of December, 1883, at 10 o'clock A. M., of said day at the front door of the court

house in El Dorado, Butler County, Kansas, offer for sale at public auction, to the highest bidder for cash in hand the following lands and tenements, viz: The North East ¼ of Section 31, in Township 26, South Range 5 East 6th P. M., in Butler County, Kansas, as the property of said John Pierce, et al. defendants, to satisfy said order of sale. W. H. Douglass, Sheriff of Butler County, Kansas. Sheriff's Office, El Dorado, Kansas, November 19th, 1883.

Attached to the foregoing printed Notice is an affidavit of T. B. Murdock, Printer and Publisher of the El Dorado Republican, a newspaper published weekly at El Dorado, Butler County, Kansas, having a general circulation in said County, and that a notice, of which the annexed is a true copy, was printed and published in said paper for 5 consecutive weeks, commencing on the 23 day of Nov., 1883.

Subscribed and Sworn to December 24, 1883, before

V. P. MOONEY, [SEAL.]

Clerk of the District Court, Butler County, Kansas.

J. C. Hoyt & Co. Sheet No. 27. El Dorado, Kansas.

Sheriff's Return.

Received this Writ, this 16th day of November, 1883, at 6 o'clock P. M. In accordance with the command of the within writ. On the 19 day of November, 1883 I ordered a notice of said property to be published as required by law, in The El Dorado Republican, a newspaper printed in and of general circulation in Butler County, Kansas, for over thirty days before the day of sale thereof. A copy of said notice with printer's affidavit is hereto attached and made a part of this return. On the 24 day of December, 1883, at 10 o'clock A. M., I offered said property for sale at the front door of the Court House in El Dorado, Kansas, the time and place stated in said notice, at public auction to the highest and best bidder for cash in hand. Sold The North East ¼ of Section 31, in Township 26 South Range 5 East, in Butler County, Kansas, for the sum of $100.00 for cash in hand, to Plaintiff, he being the highest and best bidder for the said property and that being the highest and best price bid for the same, and I hold the purchase money subject to the Order of the Court.

200 STATE OF KANSAS,
Butler County, ss:

I certify the above to be the times and manner of executing the within writ.

Dated this 24 day of December, 1883.

W. H. DOUGLASS,
Sheriff of Butler County, Kansas.

December 29, 1883, comes said Plaintiff and moves the court to confirm the sale heretofore to wit:

Motion.

On December 24, 1883, by the Sheriff of said County made in said cause of the following land and tenements situate in said County, to wit: The North East ¼ of Section 21, in Township 26, South of Range 5 East of 6th P. M., the same having been sold (without appraisement) in accordance with the order of sale issued in said cause on the 16th day of November, 1883, and being purchased by Travelers Ins. Co. for the sum of $100.00 it being the highest bidder, therefor, and that being the highest and best price bidden for the same and the Plaintiff asks that the Sheriff be ordered to make a deed to said land to the purchaser aforesaid and that the proceeds be paid as by law required.

Confirmation.

Jr. "F," Page 206.

January 8, 1884, this cause came on to be heard upon the motion of the plaintiff to confirm the Sale of real astate heretofore made in this action by the Sheriff of Butler County, Kansas, on the — day of December, 1884, and the Court having carefully examined the proceeding of said Sheriff in making said Sale and being satisfied that said sale has in all such cases made and provided it is therefore by the Court considered and ordered that the sale of Real Estate made in this action be and the same is hereby confirmed. It is further ordered by the Court that the Sheriff aforesaid make to the purchaser The Travelers Insurance Company a good and sufficient deed to the said real estate to wit: The following real estate situate in Butler County, Kansas, The North East ¼ of Section 31 in Township 26 South of Range 5 East of the 6th P. M., and that there be paid out of the proceeds of said Sale first the costs of this action, second the judgment of Plaintiff.

J. C. Hoyt & Co. Sheet No. 28. El Dorado, Kansas.

In the District Court of Butler County, Kansas.

No. 4883.

PETER SANBORN, Plaintiff,

vs.

JULIUS M. TURNER and REBECCA TURNER, His Wife; M. M. Vanderburg, H. S. Allen, A. G. Thompson, Kate Laferty, A. W. Dennison, and A. W. Florea, Defendants.

Petition.

201 February 2, 1892, Plaintiff by his attorney files his duly verified petition in the above entitled action, and shows to

the Court: That heretofore, to wit: On May 21, 1889, at Salina, Kansas, the said Julius M. Turner and Rebecca Turner, as payors, for a valuable consideration, made and delivered to Crippen, Lawrence & Co., as payees, their certain promissory note in writing, bearing date on that day, whereby the said payors promised to pay to the order of the said payees, at their office in Salina, Kansas, the principal sum of $150.00, in ten semi-annual installments, that is to say the sum of $15.00 on the twenty-first day of May and November, in each year thereafter, until said principal sum should be wholly paid. At the time of making and delivering said promissory note, it was expressly agreed between the parties thereto, and made a part of the contract in writing, that said promissory note should be negotiable and transferable, and that each installment thereof, after maturity, should bear interest at the rate of twelve per cent per annum, payable semi-annually; and it was further expressly understood and agreed between the parties thereto, and made a part of the contract in writing, that if default should be made, by the said payors, in the payment of any one of the installments, the whole note should, at the election of the legal holder thereof, without notice, become and be due and payable, and bear interest, from the date thereof until paid, at the rate of twelve per cent per annum, payable semi-annually. A copy of said promissory note is hereto attached, and made a part of this petition. That at the time of making and delivering said promissory note, the said Julius M. Turner and Rebecca Turner, as grantors, for the consideration aforesaid, and for the purpose of securing the payment of the moneys to become due thereon, when the same should become due and payable, executed and delivered to the said Crippen, Lawrence & Co., as grantees, their mortgage in writing, by which the said grantors did grant, bargain, sell and convey, to the said grantees, their heirs and assigns forever, all that tract and parcel of land situated in the County of Butler, in the State of Kansas, described as follows, that is to say, the East ½ of the North West ¼ and Lots 1 and 2 in Section 31 in Township 26 South of Range 5 East, subject to a prior mortgage for $1,200.00, with appurtenances, and all the estate, title and interest, of the said grantors therein. And the said grantors covenanted and agreed, at the time of the delivery of said mortgage, that they were the lawful owners of the premises thereby granted, and seized of a good and indefeasible estate of inheritance therein, free and clear of all incumbrances, except as hereinbefore stated. At the time of executing and delivering said mortgage, it was expressly understood and agreed between the parties thereto, and made a part of the contract in writing, that if default should be made by the said grantors, in the payment of said promissory note or any in-
202 stallment thereof, or any part thereof, when due, or interest thereon, according to the tenor thereof, or the taxes assessed on said premises, then said mortgage should become absolute, and said promissory note, and all taxes, penalties, costs and interest thereon, which may have been paid by the said grantees or their assigns, should at the option of the legal holder of said mortgage a-

once become and be due and payable, and the legal holder of said mortgage should be entitled to immediate possession of said lands and tenements, and to receive the rents, issues and profits arising therefrom, and that it should be lawful for the said grantees or their assigns at any time thereafter, to sell said premises in the manner prescribed by law, without appraisement, and out of the proceeds of such sale to retain the amount then due, according to the conditions of said promissory note and mortgage, together with the costs and charges of making such sale, and to pay the surplus, if any, to the said grantors, their heirs or assigns. That said mortgage was duly acknowledged by the said grantors and recorded in the office of the Register of Deeds of said County on the 7th day of June, 1889, at 2 o'clock P. M., in Book 59 of Mortgages, at page 515. A copy of said mortgage is hereto attached, and made a part of this petition. That afterwards, and before the maturity of said promissory note, and before any installment thereof became due and payable, the said payees, for a valuable consideration to them paid, sold, endorsed and delivered, said promissory note and mortgage to the said plaintiff, whereby the said plaintiff became, and now is the lawful owner and holder thereof. That the said payors made default in the payment of the installment of said promissory note, which by its terms became due and payable on the twenty-first day of May, 1890, for the payment of which the said plaintiff, at the time of its maturity, made demand, at the office of Crippen, Lawrence & Co., at Salina, Kansas, but the said payors then and there neglected and refused to pay the same or deposit any sum of money in said office for the payment thereof and have ever since neglected and refused to make such payment or deposit, although often requested so to do; by virtue whereof the said plaintiff has elected to have the whole of said promissory note become and be due and payable, and has exercised his option to have said mortgage become absolute, and there is now due to the said plaintiff from the said payors the sum of $140.00 with interest thereon at the rate of twelve per cent per annum from the twenty-first day of
203 November, 1889. That notwithstanding the covenants and agreements in said mortgage contained, the said grantors made further default in the payment of the taxes, levied upon said lands and tenements since the execution of said mortgage, by reason whereof the said plaintiff will be required to pay on account of said delinquent taxes, the full amount thereof including all penalties, costs and interest thereon, which may be found to be a lien upon said premises at the time of the confirmation of any sale thereof hereunder. That the said grantors, or those claiming under them, have from the time of executing and delivering said mortgage possessed and enjoyed, and still do possess and enjoy, all and singular said lands and tenements, and have at all time- received and do receive the rents, issues and profits thereof but by reason of the defaults aforesaid and the covenants and agreements in said mortgage contained, the said plaintiff is entitled to the immediate possession of said premises, and to receive the rents, issues and profits thereof. That the said M. M. Vanderberg, H. S. Allen, A. G.

Thompson, Kate Lafferty, A. W. Dennison and A. W. Florea defendants, make some claim to said premises, of some part thereof which claims are subsequent, subservient and subject to the claim of the said plaintiff. Wherefore the said plaintiff demands judgment against the said Julius M. Turner, aand Rebecca Turner, his wife, for the sum of $140.00 with interest thereon at the rate of twelve per cent per annum from the twenty-first day of November, 1889, for the costs of this action, and for the payment of all tax liens on said lands and tenements, and that the said defendants and each of them, and all persons claiming under them, be barred and forever foreclosed of all interest, right, title, lien and equity of redemption in, to or upon said lands and tenements upon the confirmation of any sale thereof hereunder, and that said lands and tenements may be sold according to law without appraisement—subject however to any interest therein, lien thereon or claim thereto, by the holder of one certain mortgage executed and delivered by the said grantors to Crippen, Lawrence & Co., on the 21st day of May, 1889, to secure the payment of $1,200.00 in five years thereafter, and recorded in the office of the Register of Deeds of said County, in Book 60 of Mortgages at Page 476, and the proceeds of such sale, be brought into Court and applied to the payment of, 1st, The taxes due and payable on said premises; 2d, The costs and accruing costs of this

Sheet No. 30.

204 action; 3d, The claim of the said plaintiff with the accruing interest thereon; 4th, To the said defendants as their interest may appear, and for such other and further relief as may be just lawful and equitable.

Service.

February 2, 1892, Summons issued under seal of the Court, directed to the Sheriff of Butler County, Kansas, commanding him to notify Julius M. Turner and Rebecca Turner, his wife, M. M. Vandenberg, that they have been sued together with H. S. Allen, A. G. Thompson, Kate Lafferty, A. W. Dennison and A. W. Florea as co-defendants, by Peter Sanborn, in the District Court, Twenty-sixth Judicial District, State of Kansas, sitting within and for the County of Butler, and that they must answer the petition filed against them, in the Clerk's office of the said Court, on or before the 4th day of March, 1892, or said petition will be taken as true and judgment rendered, accordingly. You will make due return of this summons on or before the 12th day of February, 1892. The return was made by J. W. Middleton, Sheriff of Butler County, Kansas, by S. Blakeman, Deputy, who says: Received this Writ. Feb. 2nd, 1892. And as commanded therein I summoned the following persons of the defendants within named, at the time following, to-wit: Julius M. Turner, on Feb. 3, 1892, Rebecca Turner, Feb. 3, 1892, and M. M. Vanderberg, Feb. 3, 1892, by delivering to said defendants personally, in said County, a true copy of the within summons, with all the endorsements thereon.

Waiver of Service.

February 8, 1892, was filed Waiver of Service of H. S. Allen and Kate Lafferty, which is as follows: Comes the above named defendants to this action and waive service of process, and enter their appearance herein, with leave to plead in twenty days from February 3, 1892.

Waiver.

February 9, 1892, Comes A. W. Dennison and A. W. Florea, two of the defendants to this action, and waive service of process, and enter their appearance herein, with leave to plead in twenty days from February 5, 1892.

Waiver.

February 22, 1892, Comes A. G. Thompson, one of the defendants to this action and waives service of process, and enters his appearance herein, with leave to plead in twenty days from February 18, 1892.

Answer and Cross-petition of Kate Lafferty.

February 23, 1892, Comes the defendant, Kate Lafferty, by Redden & Schumacher, her attorneys, and for her separate answer to plaintiff's petition, says: That she denies each and every allegation and averment contained and set forth therein, except the allegation that this deft. claims an interest and lien in the property in plaintiff's petition described. 2nd. This defendant further
205 answering and by way of Cross-petition against the plaintiff, and her co-defendants herein says: That on March 19, 1891, this deft. recovered a Judgment in the District Court of Butler County, Kansas, against the defts. Julius M. Turner and Rebecca Turner for the sum of $944.00 with 8 per cent interest thereon from said date. That said Judgment is still in full force and effect and wholly unpaid and is a first lien on the Real Estate in plaintiff's petition described. Wherefore this deft. asks the Court to determine the priority of liens between plaintiff and defts. and between the seveeral defts. That said premises be ordered sold and the proceeds be brought into Court and applied in the payment of the indebtedness in order of the priority as established by the Court. That this deft. have such other and further relief as in equity she may be entitled to.

Reply.

February 24, 1892, Comes said defendants A. W. Dennison and A. W. Florea and for a reply to the answer and cross-petition of said defendant Kate Lafferty filed herein, says: That they deny each and every allegation contained in said answer. Wherefore they ask for judgment as prayed for in their answer hereto filed herein.

Answer and Cross-petition of A. W. Dennison and A. W. Florea.

February 24, 1892, Comes said defendants, A. W. Dennison and A. W. Florea and for their answer to the petition of said plaintiff filed herein say: That they deny each and every allegation contained in said petition except the allegation that these defendants claim some lien upon or interest in the premises described in plaintiff's petition. And by way of further answer and cross petition to the petition of plaintiff these defendants say: 1. That on November 7th, 1889, these defendants recovered a Judgment in the District Court of said Butler County, State of Kansas, against their Co-defendants herein, Julius M. Turner and Rebecca Turner for the sum of $357.63 with interest thereon from said 7th day of November, 1889, at the rate of 12 per cent per annum and that said Judgment is recorded in Book "Journal M" at Page 266. That said Judgment is still in full force and effect unrevoked and not appeared from and wholly unpaid and the same is a first lien on the real estate described in said plaintiff's petition. Wherefore these defendants demand

Judgment against said Julius M. Turner and Rebecca Turner,
206 for the sum of $451.50 with 12 per cent therefrom this date.

And that the Court determines the priority of liens between plaintiff and the defendants & between the several Co-Defendants and that said premises be sold and the proceeds brought into Court and applied in the payment of the indebtedness in the order of this priority as established by the Court and for such further and other relief as these defendants may be entitled to.

Reply.

February 29, 1892, Comes the said Peter Sanborn, Plaintiff herein, and for his reply to the answers of Kate Lafferty, A. W. Dennison and A. W. Florea, defendants herein denies all and singular the allegations of new matter in said answers contained.

Decree.

Journal "S," Page 224.

June 8, 1892, Comes the said plaintiff, Peter Sanborn by Owen A. Bassett, his attorney and also comes the defendants H. S. Allen by Gardner and Kramer, his attorneys, A. G. Thompson, in person, Kate Lafferty by Redden and Schumacher, her attorneys, A. W. Dennison and A. W. Florea, by Shinn and Knowles, their attorneys and thereupon the said plaintiff shows to the Court: That the defendants: Julius M. Turner and Rebecca Turner, his wife and M. M. Vanderberg have been notified of the commencement of this action by having been personally served with summons herein. And the Court having examined the proofs of service as aforesaid, do find that the said defendants each of them have been notified of the commencement of this action in the manner prescribed by law, and

do hereby approve the service by summons so as aforesaid made. And the Court do find that the said defendants, Julius M. Turner, Rebecca Turner, M. M. Vandenberg, H. S. Allen and A. G. Thompson have failed to demur or reply to the answers of their co-defendants, Kate Lafferty and A. W. Dennison and A. W. Florea, and have failed to demur to, or to answer the plaintiff's petition, and have made default and thereupon this action came regularly on to be heard before the Court on the plaintiff petition and the answers of the defendants Kate Lafferty, A. W. Dennison and A. W. Florea and the Court having heard the evidence adduced, and being fully advised in the premises with the consent of the said plaintiff and the defendants answering do find that the allegation in the petition contained are true and that there is now due to the said plaintiff from the said defendants, Julius M. Turner and Rebecca Turner on the cause of action set out in the petition for principal and interest, the sum of one hundred and forty Dollars with interest at the rate of 12 per cent per annum from November 21, 1889. And the Court do further find that the said plaintiff has a first lien upon the mortgaged premises described in the petition, for the payment of the whole sum found due to him with interest, subject to any taxes which may be due thereon, and for the payment of which provision
207 is hereinafter made. And the Court do further find that the allegations in the answer of the defendants A. W. Dennison and A. W. Florea are true, and that there is now due to the said A. W. Dennison and A. W. Florea, from the said defendants Julius M. Turner and Rebecca Turner on the cause of action set out in the answer last aforesaid for principal and interest, the sum of three hundred and fifty-seven Dollars and sixty-three cents with interest at the rate of 12 per cent per annum from November 7, 1889. And

the Court do further find that the said A. W. Dennison and A. W. Florea have a second lien upon the premises described in the petition for the payment of the whole sum found due to them with interest, subject to the liens herein before set out. And the Court do furth-r find that the allegations in the answer of the defendant Kate Lafferty are true and there is now due to the said Kate Lafferty from the said defendants Julius M. Turner and Rebecca Turner on the cause of action set out in the answer last aforesaid for principal and interest, the sum of $944.00 with interest at the rate of 8 per cent per annum from March 19, 1891. And the Court do further find that the said Kate Lafferty has a third lien upon the premises described in the petition for the payment of the whole sum found due to her with interest subject to the liens herein before set out. Wherefore, it is considered and adjudged by the Court the said plaintiff have and recover of and from the said defendants Julius M. Turner and Rebecca Turner judgment for the sum of $182.70 so as aforesaid found due, with interest thereon from this date at the rate of 12 per cent per annum and the costs of this action taxed at $21.33. It is further adjudged and decreed by the Court, that in case the said defendants fail for six months from this day to pay the said plaintiff

the sum of money found due as aforesaid to him with the interest due and to become due thereon as aforesaid, and the costs of this action, and in case the said defendants Julius M. Turner and Rebecca Turner fail for one month from this date to pay to the said A. W. Dennison and A. W. Florea the sum of money found due as aforesaid to them with the interest due and to become due thereon as aforesaid, and in case the said defendants Julius M. Turner and Rebecca Turner fail for one six months from this day to pay to the said Kate Lafferty the sum of money found due as aforesaid to her with the interest due and to become due thereon as aforesaid, an order issue to the Sheriff of this county commanding him to
208 cause the lands and tenements in said petition described, to-wit: The East ½ of the North West ¼ and Lots 1 and 2 in Section 31 Township 26 South of Range 5 East, in the County of Butler in the State of Kansas, together with the appurtenaances and all the estate, title and interest of the said defendants therein, to be advertised and sold without appraisement in the manner prescribed by law provided if the said defendants, Kate Lafferty or A. W. Dennison and A. W. Florea shall cause an order of sale to issue for the sale of said lands and tenements such sale shall be made with appraisement subject to the lien of a certain mortgage, described in the plaintiff's petition, executed to secure the payment of the sum of $1,200.00 with interest thereon from November 21, 1889, and recorded in Vol. 60 at Page 476 in the record of mortgages in said County and apply the proceeds arising from such sale to the payment of, 1st. The taxes due and to become due on said lands and tenements; 2nd. The costs and accruing costs of this action; 3rd. The judgment in favor of the said plaintiff with the accruing interest thereon; 4th. The judgment in favor of the said defendants A. W. Dennison and A. W. Florea with the accruing interest thereon; 5th. The judgment in favor of the said defendants Kate Lafferty with the accrusing interest hereon, and the surplus if any be brought into Court, for the further order of the Court for the equitable distribution thereof. And it is further adjudged and decreed by the Court, that the said defendants and each of them, and all persons claiming or to claim by, through or under them or any of them upon the confirmation of any sale of said lands and tenements hereunder be barred and forever foreclosed of all title to lien upon or equity of redemption in said lands and tenements or any part thereof, and that upon confirmation of any sale made as herein provided, the Sheriff be directed to put the purchaser of said land and tenements into possession thereof.

Order of Sale.

December 16, 1892, Order of Sale issued under Seal of the Court, directed to the Sheriff of Butler County, Kansas, which is as follows: You are hereby commanded forthwith to cause the following lands and tenements in said County, to-wit: The East ½ of the North West ¼ and lots 1 and 2 in Section 31 in Township 26 South of

Range 5 East, to be advertised and sold without appraisement in the manner prescribed by law—subject to the lien of a certain mortgage, described in the decree in this action, executed to
209 secure the payment of the sum of $1,200.00, with the interest thereon from November 21, 1889, and recorded in Vol. 60, at page 476, in the record of mortgages in said County—to satisfy, first, the taxes and all tax liens on said lands and tenements; second, the costs of this action, taxed to $21.55, together with accruing costs; third, Peter Sanborn the sum of $182.70 with interest at 12 per cent from June 8, 1892; fourth, A. W. Dennison and A. W. Florea the sum of $357.63, with interest at 12 per cent from November 7, 1889, and fifth, Kate Lafferty the sum of $944.00 with interest at 8 per cent from March 19, 1891, according to a judgment rendered by the district Court, of the twenty-sixth Judicial District of the State of Kansas, sitting in and for said Butler County, at the June term, 1892, and on the eighth day of June, 1892, in a certain action then and there pending, wherein Peter Sanborn is plaintiff, and Julius M. Turner and Rebecca Turner, his wife, M. M. Vandenberg, S. Allen, A. G. Thompson, Kate Lafferty, A. W. Dennison and A. W. Florea are defendants, and that you return this order within sixty days, with your proceedings hereinunder endorsed hereon.

Proof of Publication.

February 18, 1893, was filed Publication Notice and Proof of Publication, printed copy of which is as follows:

First Published December 22, 1892.

By virtue of an order of sale, issued out of the Clerk's office, of the district Court sitting in and for said Butler County, in the above entitled action and to me directed, I will on Tuesday, the 24th day of January, 1893, at 2 o'clock in the afternoon of said day, at the front door of the Court House in said County, offer for sale at public auction and sell, without appraisement, to the highest and best bidder for cash in hand, to satisfy said order of sale, all the estate, title and interest, of the above named defendants, and each of them, and all persons claiming under them, in and to the following described tract and parcel of land, situated in said County, to-wit: The East ½ of the North West ¼ and Lots 1 and 2 in Section 31 in Township 26 South, of Range 5 East, together with the appurtenances thereto belonging—subject to the lien of a certain mortgage, described in the decree in this action, executed to secure the sum $1,200.00, with the interest to accrue thereon from November 21st, 1889, and recorded in Vol. 60, at Page 476, in the record of mortgages in said County.

Given under my hand, at my office in the city of El Dorado, in said County, this 17th day of December, 1892.

J. W. MIDDLETON,
Sheriff.

OWEN A. BASSETT,
Attorney for Plaintiff.

Attached to foregoing printed Notice is an Affidavit of Chas. H. Roff, Foreman of the Industrial Advocate, a weekly newspaper, printed, and continuously and uninterruptedly published, since December 1, 1891, in said County, and of general circulation therein, and that the notice of sheriff's sale (copy of which as published is hereto attached) was advertised in said newspaper five consecutive weeks, by five insertions, at the times following: 1st insertion, Dec. 22, 1892. 2d insertion, Dec. 29, 1892. 3d insertion, Jan. 5, 1893. 4th insertion, Jan. 12, 1893. 5th insertion, Jan. 19, 1893.

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Subscribed and Sworn to January 23, 1893 before

A. SWIGGETT,

[SEAL.] *Clerk of District Court, Butler County, Kansas.*

Sheriff's Return.

Received this order on the 16 day of December, 1892, at 6 o'clock P. M., and according to the command thereof, I caused notice to be printed and published for more than thirty days, commencing on the 22nd day of December, 1892, in the Industrial Advocate, a weekly newspaper printed in the city of El Dorado, and continuously and uninterruptedly published, since December 1, 1891, in said County of Butler, and of general circulation therein (a copy of which notice with proof of advertisement as published, is hereto attached) that I would on Tuesday, the 24 day of January, 1893, at 2 o'clock P. M. of said day, at the front door of the Court House of said Butler County, in the State of Kansas, offer at public auction the lands and tenements in said order described, and sell the same to the highest bidder, for cash in hand. And at the time and place stated in said notice, I offered said lands and tenements for sale at public auction, and sold, for cash in hand, the East ½ of the North West ¼ and Lots 1 and 2 in Township 26 South of Range 5

J. C. Hoyt & Co. Sheet 34. El Dorado, Kansas.

East to J. E. Putnam for the sum of $150.00, subject to the lien of a certain mortgage, described in the decree in this action, executed to secure the sum of $1,200.00, with the interest to accrue thereon from November 21, 1889, and recorded in Vol. 60, at page 476 in the record of mortgages in said county.

Given under my hand this 13th day of February, 1893.

J. W. MIDDLETON,
Sheriff,

By BIRD MIDDLETON,
Under Sheriff.

Motion.

January 30, 1893, Comes the plaintiff and exhibits to the court the return of the sheriff, under the order of sale issued on December 16, 1892, directed to the Sheriff of Butler county, commanding him to sell the lands and tenements described in the judgment and

decree heretofore entered in this action, and shows that the sale of the said lands and tenements have been made in all respects
211 in conformity with the provisions of the law, and moves for a confirmation of the sale, for an order directing the sheriff to make and deliver to the purchaser at said sale a deed for said lands and tenements and put said purchaser into possession thereof, and for a finding of the balance due on the judgment heretofore in this action rendered in favor of the said plaintiff.

Confirmation.

Jr. "R," Page 279.

March 7, 1893, comes the plaintiff and exhibits to the court the return of the sheriff under the order of sale issued on the sixteenth day of December, 1892, in his action directed to the Sheriff of Butler County, commanding him to sell the following lands and tenements: The East ½ of the North West ¼ and Lots 1 and 2 in Section 31 in Township 26 South of Range 5 East and the court, having carefully examined the proceedings of said sheriff, and being satisfied that the sale of said lands and tenements has been made in all respects in conformity to the provisions of the law, do hereby direct the clerk to make an entry upon the Journal that the Court is satisfied with the legality of such sale. And thereupon, on motion of the plaintiff, it is by the Court considered and adjudged that the said sale be, and the same is hereby confirmed, and it is by the Court ordered that J. W. Middleton, the sheriff of said county make and deliver to J. E. Putnam of Salina Kansas, the purchaser at said sale, a deed for said lands and tenements, and put said purchaser into possession thereof. And the Court with the consent of the plaintiff, do find that there is now due to Peter Sanborn on the Judgment heretofore in this action rendered in his favor, the sum of $146.85 with interest thereon at the rate of 12 per cent per annum from March, 1893, for which let execution issue.

J. C. Hoyt & Co. Sheet No. 35. El Dorado, Kansas.

In the Probate Court of Butler County, Kansas.

No. 1473.

In the Matter of the Estate of N. F. Frazier, Deceased.

Petition.

August 19, 1907, Ray E. Frazier files his duly verified petition in the above entitled estate and represents to said Probate Court that said N. F. Frazier late of Butler County, Kansas, departed
212 this life August 8, 1907, leaving a Last Will and Testament, which said Last Will and Testament is hereto attached, and made a part hereon. That said Last Will and Testament has been executed in all respects according to law. And your petitioner

further says that the said N. F. Frazier left surviving him as his heirs at law, Emma Frazier, his wife; Ray E. Frazier, his son, aged 30 years; Edna Frazier Adams, his daughter, aged 27 years, and Nat F. Frazier, Jr., his son, aged 25 years. And your petitioner further says that at the time of the execution of said Last Will and Testament of said N. F. Frazier, was of sound mind and memory and not under any restraint. That in said Last Will and Testament the said N. F. Frazier appointed an executrix of the same said Emma Frazier of Butler County, Kansas. In consideration whereof, and to the end that said Will may be proved, established, performed, and admitted to probate, your petitioner prays that the Court set a time for the hearing of said petition, and that upon such hearing said Last Will and Testament may be duly admitted to probate and letters testamentary be issued to said Emma Frazier as Executrix of said Last Will and Testament of N. F. Frazier, deceased.

Will.

August 19, 1907, was filed Will of N. F. Frazier, deceased, which is as follows:

I, N. F. Frazier, of the City of El Dorado, Butler County, Kansas, being of sound mind and memory, and not under any undue influence or restraint of any kind, hereby make and declare this to be my last Will and Testament:

1st. I direct that all my just debts and expenses of administering my estate be first paid in full. In this connection, I would say that I owe no debts of any kind or character, remaining unpaid at the present time.

2nd. I give and bequeath to my beloved wife, Emma Frazier, all the household furniture, beds and bedding, books, paintings, linen, china and all other chattels and effects, (except moneys and choses in action), which shall at the time of my death, be in or about my dwelling house in said City of El Dorado.

3rd. I give, bequeath and devise to my said wife, her heirs and assigns forever, my residence property situated in the City of El Dorado, Butler County, Kansas. To Have and to Hold the same unto her, the said Emma Frazier, and to her heirs and assigns forever. I give and devise to my children, Ray E. Frazier, Edna Adams and Nat F. Frazier, Jr., certain real estate and I hereby direct that during the said term of their natural life, they shall pay all taxes and assessments levied and assessed against said property,
213 said taxes to be paid out of the rents and profits of said land, and it is my will, that no conveyance or mortgage shall be executed at any time upon said land or any part thereof during their natural life.

* * * 7th. I hereby appoint my said wife, Emma Frazier, Executrix of this, my Will, and direct that she be not required by any court having jurisdiction, to give any Bond or Bonds as such Executrix, and I further direct that my said Executrix be not required

to file in any Court, any Inventory or make any appraisement of my property, either real or personal; and in the event of the death, resignation or disability of my said wife before my said estate shall be fully settled, I hereby appoint my children, Ray E. Frazier, Edna Adams and Nat F. Frazier, Jr., or the survivor or survivors of them, executors of this, my Will, and I hereby direct that they be not re-

J. C. Hoyt & Co. Sheet No. 36. El Dorado, Kansas.

quired by any Court having Jurisdiction, to give any Bond or Bonds as such Executors, and I further direct that they be not required to file in any court, any Inventory or make any appraisement of my property either real or personal.

8th. All the rest, residue and remainder of my property both real estate and personal property of all kinds and descriptions, I give, bequeath and devise as follows: I hereby authorize and direct that my executrix or executors hereinbefore named, collect as speedily as possible, all moneys due me, whether on book account, promissory notes, mortgages or other evidences of indebtedness, and sell and dispose of my real estate wherever situated at such times, and at such prices as to her or them shall seem fit and proper, and for this purpose, I hereby authorize my said executrix or executors to convey any and all my real estate, not hereinbefore specifically devised, by good and sufficient deeds, and the proceeds of such collections and proceeds of sales of real estate, I direct that my executrix or executors pay from time to time as the same accumulates in the hands of my executrix or executors, to the following named persons. One-half thereof to my said wife, Emma Frazier; one-sixth thereof to my said son, Ray E. Frazier; one-sixth thereof to my said daughter, Edna Adams; one-sixth thereof to my said son, Nat F. Frazier, Jr., provided that if at the time any or either of said distributions are about to be made as hereinabove directed, any or either of said persons above named are dead, then and in that event, it is my Will and I hereby bequeath and devise the same as follows: If at that
214 time, my said wife, Emma Frazier, shall not be living, it is my will that the portion in this paragraph bequeathed and devised to her shall be, by my executors, paid in equal shares to my three children, Ray E. Frazier, Edna Adams and Nat F. Frazier, Jr., and if at that time any or either of my said children above named shall not be living, it is my Will and I hereby bequeath and devise the portion above bequeathed and devised to them respectively to their children respectively that may survive them, in equal shares, provided that if any child or children of any or either of them shall die prior to their death respectively, leaving surviving them a child or children, then and in that event, it is my will that such child or children, shall take the shares, share and share alike, that their parent or parents respectively would take if living at that time. And provided further, that no payments shall be made to any or either of said children or grand-children, except for their support and education, until they shall respectively arrive at the age of thirty years,

and provided further, that if at that time, said Ray E. Frazier, Edna Adams and Nat F. Frazier, Jr., or either of them should be dead without leaving any child or children, or child or children of deceased children, then and in that event, I give and bequeath the share or shares in this paragraph directed to be paid to them respectively, to my legal heirs in accordance with the laws of the State of Kansas at that time, the same to be paid to them in exactly the same proportions as if I should die intestate and as if this Will had not been made.

In Witness Whereof, I have to this, my Last Will and Testament, subscribed my name this 5th day of June, 1906.

N. F. FRAZIER.

The foregoing Will was subscribed by the testator, N. F. Frazier, in the presence of each of us, and at the same time declared by him to us to be his last Will and Testament.

Dated this 5th day of June, 1906.

A. L. L. HAMILTON.
B. R. LEYDIG.

I Emma Frazier, wife of N. F. Frazier, who executed the above and foregoing Will, hereby declare that I have, this day, carefully read said Will, and am fully acquainted with all the terms and conditions of said Will, and have also been made acquainted with and know the laws of the State of Kansas, concerning descrnts and distributions, and I do hereby consent in writing to the making of the above and foregoing Will by my said husband, and to each and all of the terms and conditions of said Will.

Dated this 5th day of June, 1906.

EMMA FRAZIER.

The above and foregoing consent in writing to the Last Will and Testament of N. F. Frazier, was this day subscribed by Emma Frazier, wife of said N. F. Frazier, in the presence of each of us, and as -he

215 same time declared by her to us to be her consent in writing to the above Last Will and Testament of said N. F. Frazier, and to each and all of the terms and conditions of the same.

Dated this 5th day of June, 1906.

A. L. L. HAMILTON.
B. R. LEYDIG.

Proof of Will.

August 19, 1907, was filed Proof of Will in the above named estate. A. L. L. Hamilton and B. R. Leydig, the subscribing witnesses thereto, upon their oaths, depose and say:

We are the subscribing witnesses to the Last Will and Testament of N. F. Frazier, deceased, bearing date of June 5th, 1906. We saw

said testator sign said Will and Testament, and heard him declare the same to be his Last Will and Testament. At the time thereof, he was of full age, sound mind and memory, and under no restraint. We signed said Will as witnesses thereto, at the request of the said testator, in his presence and in the presence of each other, and we recognize the instrument now shown us as said Last Will and Testament.

Subscribed and sworn to, the day and year first above written before

JAMES T. NYE, [SEAL.]
Probate Judge, Butler County, Kansas.

Proof of Will.

August 19, 1907, was filed Proof of Will. A. L. L. Hamilton and B. R. Leydig, the subscribing witnesses, upon their oaths, depose and say:

We are the subscriping witnesses to the consent of Emma Frazier to Last Will and Testament of N. F. Frazier, deceased, bearing date of June 5, 1906. We saw said Emma Frazier sign said consent to said Will and Testament, and heard her declare the same to be her consent to the terms of said Last Will and Testament. At the time thereof, she was of full age, sound mind and memory, and under no restraint. We signed said consent to said Will as witnesses thereto, at the request of the said Emma Frazier and in her presence and in the presence of each other, and we recognize the instrument now shown us as said consent to said Last Will and Testament.

Subscribed and Sworn to, the day and year first above written before

JAMES T. NYE, [SEAL.]
Probate Judge, Butler County, Kansas.

Will Book "I," Page 81.

Order.

August 19, 1907, comes Ray E. Frazier, in his own behalf, and also as agent for Emma Frazier, Edna Frazier Adams and Nat F. Frazier, Jr., they being all the heirs at law of said deceased, and files in said Court his petition for the probate of the Last Will and Testament of said N. F. Frazier, deceased, the paper purporting to be said Last Will and Testament being attached to said petition and said petition sets forth the names of the several heirs at law
216 of said deceased, and represents and states to said Court that said N. F. Frazier died on the 8th day of August, 1907, in Butler County, Kansas, leaving a Last Will and Testament, and that at the time of executing said Last Will and Testament, said N. F. Frazier was of sound mind and memory and not under any restraint; and further asks that said court fix a time for the hearing of said petition, and that the witnesses to said Last Will and Testament be

brought into court to testify in regard to the due execution of said Will, and thereupon all parties being ready, and the witnesses to said Will being now present in Court, the Court proceeded to the hearing of said petition, and the witnesses to said Will, to-wit: A. L. L. Hamilton and B. R. Leydig, and the witnesses to the consent in writing of Emma Frazier, the wife of said N. F. Frazier, to said Will, were duly sworn, and their testimony was reduced to writing in open Court, and duly subscribed to by them, and filed, and after hearing all the evidence, and being duly advised in the premises, the Court finds that said paper attached to said Petition is the Last Will and Testament of said N. F. Frazier, deceased, and that the same was duly attested and executed, and that the testator, N. F. Frazier, at the time of the execution of said paper, was of full age and of sound

J. C. Hoyt & Co. Sheet No. 38. El Dorado, Kansas.

mind and memory, and not under any restraint, and that at the time of the execution of said Will, said Emma Frazier, the wife of said N. F. Frazier consented in writing to the execution of said Will, which writing was executed by her in the presence of said A. L. L. Hamilton and B. R. Leydig, and that she, at that time, consented to the making of said Will, and consented to each and all of the terms and conditions of said Will. It is therefore considered, ordered and adjudged by the Court that said paper attached to said petition is the Last Will and Testament of said N. F. Frazier, deceased, and that the same be and is hereby admitted to probate in said Court as such Last Will and Testament of said deceased, and the same, together with the testimony of said witnesses, is hereby ordered to be recorded in the proper records of said Court, all of which is this day accordingly done. And it further appearing to the Court that said Emma Frazier was, by said Will, duly appointed Executrix of said Last Will and Testament, and that said N. F. Frazier, in said Will, directed and requested that said Emma Frazier be appointed Executrix of said estate, without any Bond being required of her as
217 such Executrix, and it further appearing to the Court that said Emma Frazier is a fit and proper person to be appointed Executrix of said Will. It is therefore considered, ordered and adjudged by the Court that said Emma Frazier be, and she is hereby appointed Executrix of said Last Will and Testament and of the estate of said N. F. Frazier, deceased, and that the filing of a bond by her as such Executrix by and is hereby dispensed with, and as requested in said Will, it is further ordered that no inventory or appraisement of said estate, either real or personal, be now or at any time hereafter required to be filed in said Court, and Thereupon, said Emma Frazier appeared in Court and was duly sworn as such Executrix, and filed in said Court her Affidavit to properly administer said estate in accordance with said Will, and thereupon, Letters Testamentary were accordingly issued to said Emma Frazier, as Executrix of said Estate.

Oath.

August 19, 1907, was filed Affidavit to Administer estate. Emma Frazier takes her oath as executrix of said estate declaring that she will faithfully administer all the estate of the said deceased in accordance with the Will of said deceased and pay the debts as far as the assets will extend.

Subscribed and Sworn to on the day and year first above written before

JAMES T. NYE, [SEAL.]
Probate Judge, Butler County, Kansas.

Letters Testamentary.

August 19, 1907, Letters Testamentary were issued to N. F. Frazier as Executrix of said Estate, *where* are as follows:

To all to whom these presents shall come, Greeting:

Know Ye, That the Last Will and Testament of N. F. Frazier who departed this life on the 8th day of August, 1907, hath in due form of law been exhibited and admitted to Probate Court of Butler County, in the State of Kansas, and placed upon the record of said Court, and it appearing by said Will that Emma Frazier is named therein as Executrix of said Last Will and Testament to execute the same; and to the end that the property of the Testator shall be preserved for those who have a legal right thereto or interest therein, and that the said Last Will and Testament may be executed according to the request of the testator, N. F. Frazier, we do hereby constitute and appoint Emma Frazier of said County, Executrix of the said N. F. Frazier, deceased, with full power and authority to secure and dispose of all and singular the goods and chattels, rights and credits, which were of the said N. F. Frazier, deceased, at the time of his death, according to law and the directions of said Last Will and Testament and collect all moneys due said deceased, and
218 in general, to do and perform all other acts and things which are or hereafter may be required of her by law, or the decree or order of any Court having jurisdiction.

J. C. Hoyt & Co. Sheet No. 39. El Dorado, Kansas.

Judgments.

There are none.

Taxes.

The North ½ of Section 31, in Township 26 South, Range 5 East of the 6th P. M.

1916, 1st Half Paid. 2nd Half, $23.12.
1916 and prior years, Paid in full.
1917, and prior years, Paid in full.

STATE OF KANSAS,
Butler County, ss:

We hereby certify, That the above and foregoing is a full and complete Abstract of all Conveyances and Instruments of record in said County, including Tax Liens and Judgments, Foreign Executions, Mechanics' Liens and Suits pending against any of the parties named in the within Abstract which are a lien or in any way affect the title to the real estate described in the caption of this Abstract, same being Numbered 1029, and that we find nothing except as shown by the foregoing Abstract of Title which consists of Sheets Numbered 1 to 40 and includes Entries Numbered 1 to 66, both inclusive.

Witness our hand this Twenty-sixth day of May, 1917, at 8.00 o'clock A. M.

J. C. HOYT & CO.,
Abstracters,
By J. C. HOYT.

The foregoing Abstract of Title re-dated and certificate extended to this Twenty-first day of September, 1917, at 8:00 o'clock A. M. and includes entries Nos. 67 to 71 and Sheets Nos. 41 to 46, both inclusive.

J. C. HOYT & CO.,
Abstracters,
By J. C. HOYT.

219 The foregoing Abstract of Title re-dated and Certificate extended to this 27th day of May, 1918, at 8.00 o'clock A. M. and includes Entry- No-. 72 and 73.

J. C. HOYT & CO.,
Abstracters,
By J. C. HOYT.

J. C. Hoyt & Co. Sheet No. 40. El Dorado, Kansas.

No. 1.

Assignment.

Know all men by these presents: That for and in consideration of the sum of One Dollar, the receipt of which is hereby acknowledged, I hereby sell, transfer, and assign, unto Isador Litman, of Coffeyville, Kansas, the interest, as it appears hereafter, in the following oil and gas leases, on land located in Butler County, Kansas.

A One-twenty-fourth interest, subject to a contract with the Atlas Petroleum Company, in a lease executed by C. R. Nuttle and wife upon N. ½ of S. E. ¼, a strip in N. E. ¼ of Sec. 5, and W. ½ of S. W. ¼ Section 4, all in Township 27, Range 5, and N. E. ¼ of Section 31, Twp. 26, Range 5.

A One-twelfth interest in an oil and gas lease, executed by C. R. Nuttle and wife, upon the N. E. ¼ and N. ½ of Lot 1, all of N. W. ¼ of Section 31, Twp. 26 Range 5, and W. ½ of S. E. ¼ of Section 9, Twp. 27, Range 5, and W. ½ of S. E. ¼ of Section 9, Twp. 27, Range 5, and all renewals of said leases.

Said contracts in the above companies being for one-half interest, leaving said Isador Litman, the undivided interests as they appear above.

Dated this 30 day of June 1917.

P. G. KEITH.

Acknowledged as to P. G. Keith on the 30 day of June 1917.

F. S. MITCHELL, [SEAL.]
Notary Public, Montgomery County, Kansas.

Filed for record on the 9th of July, 1917, and recorded in Volume Misc. 29 at Page 102 of the records of Butler County, Kansas.

No. 2.

Know all men by these presents: That I, P. G. Keith of Coffeyville, Kansas, on this 5th day of September, 1918, for and in consideration of the sum of One and no-100 Dollars and other
220 valuable considerations, the receipt whereof is hereby acknowledged, do h-reby assign, sell, transfer, and set over unto The Condon National Bank of Coffeyville, Kansas, all of my right, title and interest in and to the oil and gas mining leases, the land assigned being described, ("all" or the part transferred) to-wit:

The North Half (N. ½) of Section of Thirty One (31) Township Twenty Six (26) Range Five (5) Butler County, Kansas All oil wells, the oil therefrom, the equipment of wells, lead lines, tanks, together with all pumps and other property belonging to and situated thereon.

Said original leases being executed by C. R. Nuttle and wife, lessors to John H. Keith and others, lessees dated the — day of ——, 19—, and recorded with and in the Register of Deeds office for Butler Co. Kans. and covering the above described property.

To have and to hold unto the said The Condon National Bank of Coffeyville, Kansas, its successors or assigns, according to the terms and conditions in said leases ——, to perform all the conditions and covenants mentioned in said lease.

That I am the lawful owner and holder of said Oil and Gas Mining Lease, and the same is free from all incumbrances, and that I have good right and title to sell and assign the same.

Boyden Abstract Company. No. 1. El Dorado, Kansas. J.

In witness whereof, I hereunto set my hand and seal the day and year first above written.

P. G. KEITH. [SEAL.]

Acknowledged as to P. G. Keith, September 5th, 1918, before
E. M. TODD, [SEAL.]
A Notary Public, Montgomery County, Kansas.

Filed for record September 9th, 1918 and recorded in Volume Misc. 37 at Page 301 of the records of Butler County, Kansas.

No. 3.

Right-of-Way.

STATE OF KANSAS,
County of Butler:

Know all men by these presents: That for and in consideration of Forty eight and 75-100 Dollars to me paid, the receipt of which is hereby acknowledged, I, C. R. Nuttle do hereby grant to John Sealy, E. R. Borwn, E. E. Plumly, R. Waverly Smith and George C. Greer, as Trustees of the Magnolia Petroleum Company,
221 a joint stock association, and to their successors in trust, the survivor or survivors, of them for the use and benefit of the Magnolia Petroleum Company and to their assigns, the right of way or easement and privilege to lay, repair, maintain, operate and remove pipe lines and appurtenances thereto for the transportation of oil or gas or either or both of them or any of the products thereof of other fluids of substances ever and through the lands, described herein to wit: Said lands lying within Butler County, Kansas, and described as Follows:

The N. E. ¼ of Section 31, Township 26, S. Range 5 East.

To have and to hold to them, the said Trustees, their successors in trust and the survivor or survivors of them in trust aforesaid, and to their assigns so long as such line or lines shall be maintained with ingress and egress to and from said realty and right of way for the purpose of constructing, inspecting, repairing, operating and maintaining the same and the removal of such at will, in whole or in part. The said grantor to fully use and enjoy the said premises except for the purposes hereinbefore granted to the said Trustees who hereby agree to pay any damages which may arise to crops or fences from the laying, erecting, maintaining and operating of said pipe lines; said damages if not mutually agreed upon, to be ascertained and determined by three disinterested persons, one thereof to be appointed by the said grantor, his heirs or assigns; one by the Magnolia Petroleum Company or its assigns; and the third by the two so appointed as aforesaid, and the written award of such three persons or any two of them, shall be final and conclusive. Should more than one pipe line be laid under this grant at any time *at* rate of twenty-five cents per rod shall be paid for each additional line so laid, besides the damage above provided for. It is further agreed that said pipes shall be buried to a sufficient depth so as not to interfere with cultivation of the soil or any other operations.

It is expressly agreed and understood between the parties hereto

hat this right of way is granted unto said Trustees, their successors r assigns, subject to their Declaration of Trust dated April 24th, 911, on file with the Secretary of State and the Charter Board of Kansas, at Topeka, Kansas which was made pursuant to the Articles f Association and the By-Laws of the Company, reference to which e hereby made.

It is hereby understood that the party securing this grant in behalf of Grantee is without authority to make any covenant or agreement not herein expressed.

Boyden Abstract Company. No. 2. El Dorado, Kansas. J.

222 Witness my hand this 17th day of May, 1918.

Signed and delivered in the presence of the undersigned Witnesses.

C. R. NUTTLE.

Witnesses:

——— ———.

——— ———.

Acknowledged as to C. R. Nuttle, before me, on this 20th day of June, 1918.

LEWIS HAMAR, [SEAL.]

Notary Public, County of Butler, State of Kansas.

Filed for record August 2nd, 1918, and recorded in Volume Misc. 39 at Page 169 of the records of Butler County, Kansas.

Boyden Abstract Company. No. 3. El Dorado, Kansas.

Certificate of Abstracter.

We hereby certify, That the foregoing abstract of title (Continuation) consisting of pages numbered from One to Three inclusive, and of Transfers numbered from One to Three inclusive, is a correct exhibit of every instrument-record or writing conveying or affecting the Title of C. R. Nuttle, to the land described in the Caption (Subsequent to May 27th, A. D. 1918, at 8:00 o'clock A. M.) upon the following-named records of Butler County, Kansas, to-wit: the records in the office of the Register of Deeds, the County Treasurer and the Clerk of the District Court.

We further certify, That there are no pending suits nor liens against said premises not shown in said Abstract. Taxes for the year 1918 and prior years paid in full.

We further certify, That there are no defects in said Title either of record or otherwise not shown in said Abstract of Title of which we have any knowledge. (Subsequent to May 27th A. D. 1918, at 8 A. M.)

Dated at El Dorado, Kansas, this 17th day of May, A. D. 1919.
THE BOYDEN ABSTRACT COMPANY,
By LEWIS HAMAR,
Asst. Secy.

Boyden Abstract Company. Continuation. No. —. El Dorado, Kansas.

Endorsed on back: No. —. Continuation. Abstract of Title to North ½ Sec. 31 Township 26 Range 5 East in Butler County Kansas. For P. G. Keith. Complete Abstracts of Title to all Lands and Town Lots in this County. Compiled by Boyden Abstract Company. Founded 1868. 125 West Central Avenue, El Dorado, Kans.

223 By Mr. Yankey: Plaintiff rests.
By the Court: Both sides rest?
Counsel: Yes.

Thereupon, the following order of submission was entered:

Now, on this 13th day of November, 1919, both parties having submitted their evidence, the cause is submitted to the court.

It is thereupon ordered that the plaintiff take and have twenty days from the date hereof in which to make and serve their brief upon the interveners, and that the interveners have twenty days thereafter within which to prepare and serve their brief herein. And that the plaintiff have fifteen days thereafter to make and serve their reply brief. And that the case then be submitted to the court unless court should desire oral argument.

JOHN C. POLLOCK,
Judge.

In the United States District Court for the District of Kansas, Third Division.

No. 346.

LIBERTY OIL COMPANY, INCORPORATED, a Corporation, Plaintiff,

vs.

THE CONDON NATIONAL BANK, a Corporation, Defendant; ATLAS Petroleum Company, a Corporation; C. M. Ball, Isadore Litman, P. G. Keith, and J. H. Keith, Interveners.

Now on this 13th day of May, 1920, we, the undersigned attorneys appearing of record for the defendant and the interveners in the above entitled cause, having examined the above and foregoing transcript of the testimony and proceedings before the court, and bill of exceptions find the same to be correct and true and consent that the Trial Judge settle, sign and seal the said bill of exceptions and approve the said transcript of the evidence and testimony and

order that the same together with the within testimony may be filed in said cause as a part of the records herein, and we hereby waive any and all notice of the time and place of settling, signing and sealing the said bill of exceptions and the testimony therein and
224 consent that the same may be settled, signed and sealed at any time and place upon presentation of the same to the Trial Judge herein.

J. H. KEITH,
JOHN J. JONES,
Attorneys for Defendant and All Interveners.

Certificate to Bill of Exceptions.

Now, on this 17th day of May, 1920, and within the time heretofore fixed by the order of this court, the plaintiff presents the foregoing as its true and correct bill of exceptions in this case and prays the Court to allow, sign and duly certify the same and order that the said bill of exceptions be made a part of the record in this case.

And it further appearing to the Court that J. J. Jones, Esq., who represented the defendant and the interveners as attorney of record in the trial of the above entitled case, having examined the above and foregoing testimony and bill of exceptions and found the same to be correct and that the said J. J. Jones, Esq., having filed herewith his consent that the Trial Judge herein may settle, sign and seal the foregoing bill of exceptions and that the same together with the within testimony may be filed in the said cause as a part of the records in said cause:

And it further appearing that the said J. J. Jones, Esq., having waived any and all notice of the time and place of the settling, signing and sealing of the said bill of exceptions and testimony therein and consents that the same may be settled, signed and sealed at any time and place when presented to the Trial Judge.

Now, therefore I, the undersigned Judge of said Court, do hereby certify that the above and foregoing bill of exceptions is a full, true and correct transcript of all of the proceedings had on the trial of the above entitled action and contains all of the evidence, objections and rulings of the court thereon and exceptions saved at the trial of the said action, and that the said bill of exceptions is true and correct and is therefore now allowed and signed by this Court.

It is further ordered that the same be filed by the Clerk of this court and be made a part of the record of this case.

225 It is further ordered that the foregoing transcript of the evidence introduced at the trial and of all of the proceedings occurring at the trial be and the same are hereby approved as a full and complete transcript and statement of all the evidence introduced and offered, and of all the proceedings appearing at the trial, and the same is ordered filed in this cause as such transcript and statement.

JOHN C. POLLOCK,
Judge of the United States District Court,
District of Kansas, Third Division.

Approved:

JOHN J. JONES.
CHAS. G. YANKEY.

STATE OF KANSAS,
Wyandotte County, ss:

I, Elizabeth La Bar, the official stenographer who reported the proceedings and testimony in the trial of the above entitled cause, hereby certify that the above and foregoing is a full, true and correct transcript of all of the proceedings and testimony, both oral and documentary, (exhibit No. 3, Abstract of title) offered and introduced in the trial of the foregoing action, and also of all exceptions taken and noted, together with the instructions given in the charge of the court to the jury, and all exceptions and changes therein; and I now certify the foregoing to be such transcript; and

In testimony whereof, I hereunto have signed my name at Kansas City, Kansas, this 8th day of May, 1920.

ELIZABETH LA BAR.

In the District Court of the United States for the District of Kansas, Third Division.

No. 346. Law.

LIBERTY OIL COMPANY, a Corporation, Plaintiff,

vs.

THE CONDON NATIONAL BANK, a Corporation, Defendant, and ATLAS PETROLEUM COMPANY, a Corporation, et al., Interveners.

Memoranda of Decision on Merits of Controversy.

The facts out of which this controversy arose, are these:

On the 24th day of May, 1918, the plaintiff entered into a contract in writing with interveners to purchase oil and gas leases cov-
226 ering certain lands in Butler County, this state, which contract is, as follows:

Know all men by these presents: That this contract made and entered into this the 24th day of May, 1918, by and between the Liberty Oil Company, incorporated, a corporation created and existing under the laws of the State of Virginia, with its principal office in the city of Alexandria, Virginia, and with its main business office at 62 Cedar Street, in the city of New York, state of New York, the party of the first part, and the Atlas Petroleum Company, a corporation created and existing under the laws of the State of Oklahoma, with its principal office at 1012 Baltimore Avenue, in the city of Kansas City, State of Missouri, and C. M. Ball, Isador

Litman, P. G. Keith and J. H. Keith, all of Coffeyville, Kansas, the parties of the second part.

Witnesseth: That, whereas, the said parties of the second part are the owners of the following described oil and gas leases, together with the lease-hold estate thereby created and the wells, casing, tubing, rods, lines, pumping outfits, derricks, tanks, bailers, engines, machines, machinery, material, fitting houses and structures thereon situated and used in connection with the operation of the same as an oil producing property including the undivided one fourth (¼) interest in the water pump station situated on the —— farm and — interest in the water lines leading from said station to said leases hereinafter described, said leases being situated in Butler County, Kansas, and bounded *as* described as follows, to-wit.

South one-half (S. ½) of Lot One (1); all of Lot Two (2); and the Southwest Quarter (S. *E.* ¼) of *of* the Northwest Quarter (N. W. ¼) otherwise described as the South One Half (S. ½) of the Northwest Quarter (N. W. ¼) of the Northwest quarter (N. W. ¼) and the South one-half (S. ½) of the Northwest Quarter (N. W. ¼) of Section 31, Township 26, Range 5, containing One Hundred Acres (100) more or less; and the Northeast Quarter (N. E. ¼) of section 31, Twp. 26, Range 5, containing 160 acres more or less.

Now, therefore, this agreement witnesseth: That for and in consideration of the premises and of the agreements hereinafter contained and the sum of One Dollar ($1.00) cash in hand, paid by said first party, the receipt whereof, being hereby ack-owledged by said second party. It is hereby agreed by and between the parties hereto as follows, to-wit:

I. That said parties of the second part have this day sold unto the said parties of the first part said leases in so far only as they apply to the Northeast Quarter (N. E. ¼) of Section 31, Township 26, Range 5; and the South One Half (S. ½) of the North-
227 west Quarter (N. W. ¼) and the South One half (S. ½) of Lot One (1) and lot 2 in said Section 31, Twp. 25, Range 5; especially reserving the remainder of the land described in said leases, to-wit: it being the intention to specifically except the sixty (60) acres (covered by one of the said leases) owned by J. E. Keith, C. M. Ball, Isadore Litman, and P. G. Keith, same to be reserved to said Keith, Ball, Litman and Keith, and no part of same is included in this sale) for the sum of One Million One Hundred Fifty Thousand Dollars ($1,150,000.00) to be paid as hereinafter provided, subject, however, to each and all of the terms, conditions, and agreements of this contract.

II. That said party of the first part has this day deposited with the Condon National Bank at Coffeyville, Kansas, the sum of One Hundred Thousand Dollars, ($100,000.00) simultaneously with the deposit with said bank of this agreement; said sum of One Hundred Thousand Dollars ($100,000.00) and said assignments, transfers and conveyances to be held by said bank in Escrow and shall

be delivered by said bank to the parties and upon the conditions as provided in this contract; said Condon National Bank is hereby expressly authorized, empowered and directed by said parties hereto, to act in the manner herein provided for.

III. That said parties of the second part shall furnish said party of the first part an abstract of the title of said property showing good and marketable title to said property vested in said second parties, free and clear of all liens, encumbrances, claims and indebtedness and free of pending litigation and also free of all contracts affecting said property for the sale of said oil that are not subject to cancellation or not to exceed six months' notice by the said second parties or their assigns; said second parties shall deposit in said bank to be held in escrow and delivered as herein provided apt and proper deeds of assignment and transfers duly executed and acknowledged sufficient in law and equity to completely vest in said first party the title of all of said property, free from all liens, encumbrances, claims and indebtedness of every kind and character, (except as hereinafter expressly provided) and with covenants of special warranty; said second parties shall furnish said first party with satisfactory evidence of the authority of the officio of said Atlas Petroleum Company to execute, acknowledge, and deliver said deed of assignment and transfer on behalf of said Atlas Petroleum Company.

IV. The first party shall be entitled to 7 days in which to examine the title of said second parties to said property and the said deeds of assignments and transfers and the said authority of said offices of said Atlas Petroleum Company, from and after the date said abstract of title and said evidence of authority is delivered to said first party's agent.

228 V. In the event said examination of title by said first party shall show that said second parties have good and marketable title, free from all liens, encumbrances, claims, indebtedness, litigations and contracts (except as herein expressly provided) and that said deeds of assignment and transfers and said authority of said officers of said Atlas Petroleum Company are in compliance with the terms of this contract; said first party shall pay unto said bank the balance of said purchase price, to-wit: One Million and Fifty Thousand Dollars ($1,050,000.00) whereu-on said bank shall deliver unto said first party or its agent, said deeds of assignments and transfers and said bank shall pay over to said second parties as the interest may appear, the said sums deposited with it hereunder; and thereupon the said second parties shall deliver unto the said first party or its agent the actual possession of the property first above described.

VI. In the event the examination of said title shall show a good and marketable title to all said property in said second parties free from all liens, encumbrances, claims, indebtedness, litigation and contract (except herein expressly provided) and said deeds of assignment and transfer and said authority to said officers of said

Atlas Petroleum Company as hereinbefore provided and said first party shall refuse to pay the said sum of One Million and Fifty Thousand — ($1,050,000) at the expiration of the days herein before provided for, the said One Hundred Thousand Dollars ($100,000) shall be delivered by said bank to said second parties as liquidated damages and this contract shall become null and void; said bank shall thereupon return to said second parties said deeds of assignments and transfers.

VII. It is understood that the purchaser shall assume the payment of the actual drilling of wells numbers 7 and 8 on said property and shall pay for the oil engines put on said property since April 14, 1918, at wells numbers 1, 4, and 6, and shall also return to the National Refining Company the string of Seventeen (17) pound 5 3-16 inch casing, borrowed from said National Refining Company. The purchaser shall further assume the payment to the lessor of the Six Thousand Dollars ($6,000.00) provided for in the lease in the event said sum shall become due and payable under the terms of said lease.

VIII. In the event the examination of said title of said second parties by first parties shall disclose that same is not a good and marketable title to all of said property or that said property is not free from all liens, encumbrances, claims, indebtedness, litigations, and contracts (except as herein before expressly provided) or that said deeds of assignments and transfers and said authority of said officers of said Atlas Petroleum Company are not in accordance with and in compliance with the terms and provisions of this con-
229 tract, then the said first party shall so notify second parties and they shall have a reasonable time, not to exceed thirty days in which to perfect said title, etc., but should second party neglect or refuse to so perfect its said title within said thirty days, the One Hundred thousand Dollars ($100,000.00) shall be returned to the first party and this contract shall become void and each party to this contract shall be absolved from any and all liability under the same, or from any damages for the non-fulfillment thereof.

In witness whereof — hereunto set — hand and seal the day and year first above written.

LIBERTY OIL COMPANY, INCORPORATED,
By EDWARD M. BURDETTE,
Its President.
ATLAS PRETROLEUM COMPANY,
By JOHN J. McPERSON,
Its President.

Attest:
[SEAL.] R. E. BUSH,
Secretary.

R. G. KEITH.
C. M. BALL.
J. H. KEITH.
ISADOR LITMAN.

The agreement as by its terms specified, when made, together with a draft for one hundred thousand dollars, was on the same day deposited with defendant bank in escrow and the following receipt by the bank given to plaintiff.

"Coffeyville, Kansas, May 24, 1918.

Received of Liberty Oil Company, Inc., draft bearing even date herewith drawn by Liberty Oil Co. Inc. by Edward M. Burdette, President, at Sight on A. B. Leach & Company 62 Cedar Street, New York City, N. Y. payable to The Condon National Bank of Coffeyville, Kansas the proceeds of said draft to be held by the undersigned bank and disposed of in accordance with the terms of that certain contract dated May. 24 1918 made between Liberty Oil Co. Inc. and Atlas Petroleum Company, C. M. Ball, Isador Litman, R. G. Keith and J. H. Keith, a copy of which contract has been delivered to the undersigned Bank simultaneously with the delivery of said draft.

THE CONDON NATIONAL BANK.
F. S. MITCHELL,
Vice Prest.

Thereafter, and within the time specified in the contract interveners did furnish plaintiff with an abstract of the title to the lands on which the oil and gas leases by them sold to plaintiff rested.

After receipt of this abstract of title by plaintiff it was sub-
230 mitted to its counsel, who, on May 31, 1918, furnished an opinion thereon, pointing out many alleged defects in the title which it was recommended should be corrected. Interveners, although contending the abstract of title furnished showed the title to the lands to be in conformity with the requirements of the contract in that respect, yet set about in good faith to remove said alleged defects in the title, and in so doing procured many conveyances, affidavits of fact, &c., shown in this record. Meanwhile, the sale not having been consummated for the reason the title to the property tendered by interveners to plaintiff was not acceptable to it, on August 1, 1918, plaintiff brought this action against the defendant bank to recover back the earnest money deposited therein of one hundred thousand dollars. In this action, as the bank was a mere escrow or stake holder of the fund, interveners, vendors of the leases to plaintiff, were permitted to intervene and claim the fund from the bank under the terms of the contract.

On issues so joined between plaintiff and the interveners, the bank being willing to pay it to whichever party the fund was awarded, a jury being waived to try the case, the respective rights of the parties to the fund deposited under the terms of the contract stand tried and submitted for decision.

The obligations of the respective parties to the contract in regard to title to the lands, the furnishing of an abstract of the title to plaintiff, the delivery of papers and possession of the property and the making of payment under the terms of the contract, and disposition of the earnest money deposited with bank, is found in

paragraphs III to VIII, inclusive, of the contract as above set forth.

It is the contention of the plaintiff interveners did not have "a good and marketable title" to the premises on which the leases by them sold to the plaintiff rested, and that the abstract of title furnished to plaintiff so disclosed.

Wherefore, it is contended, plaintiff was not obligated to accepted the leases tendered and pay the purchase money therefor in accordance with the terms of the contract. Hence, it is insisted, it is entitled to draw down the earnest money by it deposited with the bank and retire from the contract.

On the contrary, it is the insistence of interveners they did have and did tender to plaintiff in pursuance of the terms of the contract a good and merchantable title to the leasehold interests in the described lands, which they tendered to plaintiff, as shown by the abstract of titles furnished; and, as plaintiff has failed to accept the leases tendered and conclude the purchase, they are intitled, under the terms of the contract, to the fund in the hands of the bank as agreed liquidated damages for plaintiff's breach of the contract to purchase.

231 While numerous objections to the sufficiency of the title shown by the abstract of title furnished plaintiff by the vendors appears to have been taken by its counsel at the time plaintiff refused to proceed further with the purchase, the specific objection now made and relied upon by plaintiff on the trial of this case, and in its briefs and arguments, is based upon these facts, as shown by the abstract:

A portion of the lands involved, to-wit, lots one and two, and the east half of the northwest quarter of section thirty-one, town, twenty-six, range five east, Butler County, in the year 1893, stood of record in the name of one J. E. Putnam of Salina, this state; however, in trust for a co-partnership composed of Joseph J. Crippen, Henry J. Crippen and Henry J. Putnam, doing business as Crippen, Lawrence & Company. This partnership being insolvent, on September 18, 1893, made an assignment for the benefit of creditors at the city of Denver, Colorado, under the laws of that state. In the deed of general assignment for the benefit of creditors one Stephen H. Standart was named as assignee to administer the trust. He accepted the same, gave bond, qualified and acted as such assignee. Thereafter, and for the purpose of allowing Standart to carry out his trust, and at the request of Crippen, Lawrence & Company, on the twenty-first day of September, 1893, J. E. Putnam conveyed the lands standing in his name to Standart as assignee. This conveyance recites the fact that Crippen, Lawrence & Company, being insolvent, had made an assignment for the benefit of their creditors. Thereafter and on August thirty first, 1894, Standart, assignee, conveyed the tract in question, the same being a portion of the lands covered by the oil and gas leases by interveners sold to plaintiff, to one Benjamin Jenkins of Salina, this state, by deed of special warranty, who, in turn, in July, 1896, conveyed to J. J. Crippen, Trustee, who, in turn, February 19, 1902, conveyed by deed of general warranty to one H. H. McConnell, from whom, by means mesne convey-

ances, regular in form, the title to the lands descended to the grantor in the oil and gas leases held by interveners and sold under the contractor in question to plaintiff. The reason for the transfer made by Standart, assignee, to Jenkins, and by Jenkins and wife to J. J. Crippen, as disclosed on the abstract, as shown by a certified copy of the record made in the court of Colorado administering the trust estate of Crippen, Lawrence & Company for the benefit of creditors, was this: Certain of the lands of Crippen, Lawrence & Company, including the tract in question, were at the time of their voluntary assignments heavily encumbered by valid first mortgage liens thereon to secure indebtedness owned by the Merrimack River Savings Bank of Manchester, New Hampshire, which was threatening foreclosure of said mortgages at the time. In such event, as Crippen, Lawrence & Company were obligated for the payment of the indebtedness so secured should the lands fail to sell at
232 foreclosure sale for an amount sufficient to pay all costs, taxes and prior liens on the premises, deficiency judgments would be entered which would in turn be provable against the bankrupt estate of Crippen, Lawrence & Company being administered in the Colorado court for the benefit of creditors. In this condition of affairs, the owner and holder of the notes secured by the mortgages on the lands in many counties in this state being willing to accept the lands in payment of the indebtedness in the event Joseph J. Crippen would consent to act as its trustee and handle and dispose of the lands for its benefit, and thus relieve the bankrupt estate from payment of any deficiency judgments which might be entered, and, at the same time merge the equitable rights of the mortgagee in the legal title to the encumbered lands,—to accomplish this purpose the transfer from Standart, as assignee, on application, to the Colorado court, was ordered and made and the trust accepted and performed by J. J. Crippen.

Under this condition of the record, as the real estate involved lies in this state, and as the assignment for the benefit of creditors made by Crippen, Lawrence & Company, including the lands in question, was made in Colorado, and carried out and administered in a court of that state, and not in under the laws of this state, or administered by authority of any court of this state, it is contended by plaintiff the deed by Standart, assignee, for the benefit of creditors to Jenkins is null and void and passed no title.

In support of this contention, counsel for plaintiff rely upon three cases emanating from the Supreme Court of this state, to-wit: Thompkins v. Adams, 41 Kan. 38; Watson v. Holden, 56 id. 657; McNutt v. Hellans, 82 id. 424. In this regard, it may be said:

It cannot be doubted from a reading of the authorities controlling here it is the law of this state, an assignee for the benefit of creditors under a deed of assignment made, accepted and being administered in a court and under the laws of a foreign state has no power to sell and convey real property situate in this state, but, on the contrary, such real property must be conveyed under and in pursuance of the laws of this state and by authority of a court of this state having jurisdiction of the res. The statute of this state provides:

"The District Court, or Judge thereof, in vacation, shall make an order for the sale of all the real or personal estate conveyed by any deed of assignment, either for cash in hand or upon such reasonable credits as shall appear to such court or judge to be most advantageous to all the parties in interest, and shall, by order, direct the nature of the security to be taken at sales made by assignees under the provisions of this chapter. (General Statutes 1915, Sec. 464.)

However, as appears from the foregoing facts stated, while
233 the beneficial interest in the real estate involved herein did rest in the insolvent debtors, Crippen, Lawrence & Company, which beneficial interest did, by virtue of the deed of assignment for the benefit of creditors, pass to Standart as assignee, yet interveners contend, conceding a conveyance made by an assignee for the benefit of creditors may not be made without an order from a court of this state administering such trust, the legal title in this instance stood in the name of J. E. Putnam and by him was conveyed and passed by his independent deed to Standart as assignee; and having so passed to Standart as assignee by his deed entirely independent of any order from the court of Colorado administering the assignment, or, of any other court, Standart could by his voluntary deed pass the legal title on to another, and this he did by his conveyance made to Jenkins, as shown by the abstract. While this act of Standart as assignee was in fact authorized by order of the court in Colorado, such order, even if void, did not affect the validity of the deed to pass the title as an independent act of Standart assignee. And the case of Boyer v. Sims, 61 Kans. 593, and Webb v. Rockfeller, 66 Kan. 160, are relied upon to sustain this position.

It is true, as contended by interveners, nothing passed by the deed of general assignment for the benefit of creditors of Crippen, Lawrence & Company to Standart as assignee save and except whatever of beneficial interest they had in the lands in question over and above all valid fixed liens thereon. As they did not hold the legal title to the lands, they could not convey the same. J. E. Putnam held the legal title, and this he conveyed by his independent deed, subject, however, to all valid existing liens thereon. In this instance it transpired the deed of assignment of Crippen, Lawrence & Company conveyed to Standart as assignee nothing of value as was determined by the Colorado court administering the trust, for the land possessed no value over and above the amount of the valid first mortgage debt resting thereon in favor of the Merrimack Savings Bank. Therefore, the legal title was by the assignee transferred by his deed to a trustee of the holder of the valid first mortgage lien on the land in the protection of all creditors of the insolvent estate and the enforcement of the prior mortgage lien resting upon the land regardless of the assignment laws of this state. The court of Colorado administering the trust estate was just as competent to determine whether any beneficial interest passed to the assignee for the benefit of creditors, and whether it was for the best interest of the estate being administered by it to retain through its assignee the legal title by him received to the lands in dispute as would have been a court of this state, and any decision of this ques-

tion by the Colorado court is binding upon, not only the parties litigant in that court, but upon the courts of this state as well. True, if that court had determined any beneficial interest had
234 passed from Crippen, Lawrence & Company by virtue of their deed of general assignment, and had ordered the assignee to realize thereon for the benefit of the estate in its hands, and, in so doing had sold and conveyed the land in the execution of his trust as assignee, such conveyance must have been made in compliance with the laws of this state and under order of the court of this state having jurisdiction of the res. But, such was not the decision of the Colorado court. The deed made by the assignee was in legal effect and operation merely a relinquishment of the naked legal title to the trustee of the owner of the valid first mortgage lien on the lands to enable him to handle the lands for the benefit of the mortgagee. As this naked legal title had come to the assignee by independent conveyance, so by his independent conveyance he could pass the same on to another as he did in this case.

The ultimate question, however, to be determined is not whether such was the legal effect of the conveyance by Standart assignee on the validity or invalidity of said conveyance, but rather, is this: By the conveyances mentioned, appearing in the chain of title as shown by the abstract tendered the purchaser under the contract, did the vendors thereby appear to possess and could they deliver to the purchaser a good and marketable title to the leasehold interest sold, as provided by the terms of the contract?

The following may be regarded as correct definitions of the phrase "A good and marketable title" as stipulated in the contract. In Cyc. of L., vol. 39, p. 1442, under the title of "Vendor and Purchaser" it is said:

"The rule that the title must be free from reasonable doubt does not require a title absolutely free from all suspicion or possible defect, but only requires a title which a reasonable purchaser, well informed as to the facts and their legal bearings, willing and anxious to perform his contract, would, in the exercise of that prudence which business men ordinarily bring to bear upon such transactions, be willing to accept and ought to accept. The fact that in the action between the vendor and the purchaser the court may consider the title good does not render it marketable. In the absence of an express stipulation therefor a marketable title does not mean a title which satisfies the purchaser or which his attorney pronounces marketable."

In Wesley v. Eells, 177 U. S. 370, Mr. Justice Harlan delivering the opinion for the court, said:

"Again, it is a settled rule of equity that the defendant in a suit brought for specific performance of an executory contract will not be compelled to take a title about which doubt may reasonably exist or which may expose him to litigation."

235 Maupin, in his work on Marketable Title to real estate, Sec. 284, says:

"Where the probability of litigation ensuing against the purchaser in respect of the matter in doubt is considerable; or, as it was put by Alderson, B., where there is a "reasonable decent probability of litigation." The court, to use a favorite expression, will not compel the purchaser to buy a law suit. If there be any reasonable chance that some third person may raise a Question against the owner of the estate after the completion of the contract, the title will be deemed unmarketable."

Taking the foregoing definitions of "a good and marketable title," did the vendors possess and tender such a title to the plaintiff in compliance with their contract of sale? If so, they should receive the earnest money deposited by way of liquidated damages under the terms of the contract. Otherwise, not.

This is the difficult and doubtful question presented in this case. As has been seen, in the opinion of this court, the title possessed by the sellers of the leases, as appeared from the abstract tendered, was good in law. However, the question now is, should a reasonably prudent man, with a knowledge of the facts and the law relating thereto, have accepted such title as was shown thereby, or would he have believed from such knowledge if he did accept the title tendered he would be taking chances of involving himself in vexatious and expensive litigation in defending such title?

This question would be one of more doubtful solution were it not for other facts appearing both on the face of the abstract of title presented to plaintiff by the vendors, and also from other proofs found in this record. As has been seen, the contract between the parties was made May 24, 1918. If we regard the deed made by Standart assignee to Jenkins and by Jenkins to J. J. Crippen as trustee as a mere relinquishment of the non-beneficial legal title held by the assignee of Crippen, Lawrence & Company for the benefit of creditors, to the trustee of the Merrimack River Savings Bank for the use and benefit of the owner and holder of the valid first mortgage liens on the property, and by way of protection of the insolvent estate in his hands yet said trustee by his warranty deed, with full covenants of seizing conveyed not alone the naked legal title to the property, but also the entire beneficial interest therein to one H. H. McConnell, February 19, 1902, who, in turn, by his deed of general warranty, with full covenant of seizing on January 16, 1903, conveyed to one N. F. Frazier, of Butler County, Kansas, the county in which the lands are situate; now, in the absence of a contrary showing, possession follows the title. The statutes of limitations of this state are not statutes of presumption; on the con-
236 trary, they are statutes of absolute repose, Clause 4th, of Section 15 of the Code of this State provides: "An action for the recovery of real property not hereinbefore provided for fifteen years." Again, there is a statute of this state which provides certain disabilities may toll this statute. But, an examination of the

abstract itself discloses the title to Putnam for Crippen, Lawrence & Company was received March 20, 1893, by virtue of a sheriff's deed made under judicial proceedings, hence any adverse or prior claimant to the land under clause first of the section 15 of the Code was compelled to institute an action within five years from the date of recording of said deed March 25, 1893, or remain forever barred of same. Putnam, the holder of the legal title had no beneficial interest in the property, hence no one claiming under him could maintain any action save the partners, Crippen, Lawrence & Company or some one claiming under or through them. That partnership conveyed all the interest of its partners which they possessed to Standart, as assignee for their creditors, hence no one claiming under them save their creditors could complain. The court of Colorado administering the trust for the benefit of the creditors determined the members of the partnership of Crippen, Lawrence & Company possessed no beneficial interest whatever in the property over and above the amount of the valid mortgage lien thereon held by the Merrimack River Savings Bank. Hence, the creditors were cut off and forever barred by the judgment of that court made in administering the trust in their behalf, and the property was divided to the satisfaction of said mortgage. It is thus seen, as shown by the abstract itself, there was no one in esse at the time the contract between the parties in this case was made who could annoy the plaintiff as purchaser of the leasehold interests from interveners by any reasonable or probable claim on said premises.

Again, as shown by affidavits found in the record, the venders of the leasehold interest, and their grantors, had been in actual, open, adverse, notorious possession of the premises in question for more than fifteen years prior to the making of the deed by Crippen as trustee to McConnell. Without any validity, whatever, therefore, in the conveyance of Standart as assignee to Jenkins, interveners entering into possession under their leasehold interests, or, the plaintiff on transfer of the same to it, would possess an absolute right and title to the premises, impervious to a possible attack from any claimant thereon, as shown by the abstract and record in this case.

From all of which, I am of the opinion, judgment for the fund in the hands of the bank must go in favor of interveners and against plaintiff, as stipulated damages for breach of the contract by plaintiff.

237 It is so ordered.

JOHN C. POLLOCK,
Judge.

Kansas City, Kansas, February 6th, 1920.
Filed February 7, 1920.

Journal Entry of Judgment.

Now on this 17th day of April, 1920, this cause came on for decision by the Court, the jury having been duly waived in writing by all parties.

The Court having had said cause under advisement as per order of November 13, 1919, and being fully advised in the premises and after full consideration thereof the Court does find for the defendant, The Condon National Bank and for the interveners, Atlas Petroleum Company, C. M. Ball, Isadore Litman, P. G. Keith and J. H. Keith, to which the plaintiff at the time excepted and excepts.

The Court further finds that the interveners were entitled to the delivery to them of the One Hundred Thousand ($100,000.00) Dollars since the 30th day of June, 1918, and that the possession of the same was withheld through the direction of the plaintiff and that the interveners are entitled to recover interest at the rate of six pr cent per annum from the 30th day of June, 1918, on said sum from the plaintiff, to which the plaintiff at the time duly excepted and excepts.

It is now therefore considered, ordered and adjudged that the plaintiff take nothing as against the defendant, The Condon National Bank or as against the interveners, Atlas Petroleum Company, C. M. Ball, Isadore Litman, P. G. Keith, and J. H. Keith or either or any of them, and judgment is hereby rendered against the plaintiff for the costs herein incurred, made and expended by the defendant, The Condon National Bank, and the interveners, Atlas Petroleum Company, C. M. Ball, Isadore Litman, P. G. Keith and, J. H. Keith and each and all of them, taxed at — Dollars, to which the plaintiff at the time excepted and excepts.

That the interveners, Atlas Petroleum Company, C. M. Ball, Isadore Litman, P. G. Keith and J. H. Keith do have and recover from the plaintiff, Liberty Oil Company, the sum of Ten Thousand, Seven Hundred Fifty ($10,750.00) Dollars, which is the interest on said sum of One Hundred Thousand ($100,000.00) Dollars at six per cent from the 30th day of June, 1918, to which the plaintiff at the time duly excepted and excepts.

238 That the defendant, The Condon National Bank, having heretofore paid into the hands of the court the funds in its possession it is discharged from all further liability in this cause. That the interveners, Atlas Petrol-um Company, C. M. Ball, Isadore Litman, P. G. Keith and J. H. Keith have judgment for One Hundred Thousand Dollars ($100,000.00) now in the registry of the court, and the registrar of the court be, and he is hereby, ordered and directed forthwith to pay to said interveners, Atlas Petroleum Company, C. M. Ball, Isadore Litman, P. G. Keith and J. H. Keith, the funds now in the registry of the court, to-wit One Hundred Thousand Dollars ($100,000.00), to each and every part of which plaintiff at the time duly excepted and excepts. All of which exceptions were by the Court allowed. The plaintiff in open court and at the time of the rendering of said judgment gave notice of its appeal to the United States Circuit Court of Appeals for the Eighth Circuit.

It is further ordered on application of the plaintiff that the execution of said judgment be stayed for the period of thirty day- and that the plaintiff shall have such time within which to execute a supersedeas bond in the sum of Fifteen Thousand Dollars ($15,-

000.00), which bond, approved by the Clerk of the Court, shall sta said execution pending said appeal.

It is further ordered upon application of the plaintiff that th plaintiff have ninety days within which to prepare and serve a bi of exceptions a transcript of the record and a statement of the ev dence on appeal, and that the defendant and interveners have fifte days after service of the same upon them to suggest amendment Said bill of exceptions to be settled and approved by the Court upo five days' notice of the settling of the same by either party to th other.

JOHN C. POLLOCK,
Judge.

O. K.

CHAS. G. YANKEY.
JOHN J. JONES.

Filed April 17, 1920.

Assignment of Errors.

Now on this 17th day of April, 1920, comes the plaintiff by i solicitors, Harry E. Karr and Charles G. Yankey, and says that th decree and judgment entered in the above entitled cause on the 17t day of April, 1920, is erroneous and unjust to the plaintiff, an that there is manifest error in the records, proceedings, decree an judgment herein and aforesaid in the following particulars, to-wit

239

I.

The Court erred in its decree and judgment for the intervene and against the plaintiff.

II.

The Court erred in not finding that the title submitted by th interveners was not a good and marketable title as required by th contract between the plaintiff and interveners.

III.

The Court erred in its decision that the title was conveyed b J. E. Putnam to Stephen H. Standart, Assignee, and by him t Benjamin Jenkins, and by him to J. J. Crippen, Trustee for th Merrimac River Savings Bank, in settlement of the debts of Cripp Lawrence & Company due said bank.

IV.

The Court erred in its decision that Stephen H. Standart, A signee, for the benefit of creditors, could pass the title involved i this controversy without the order of any court.

V.

The Court erred in its decision that land conveyed to Stephen H Standart, Assignee, for the benefit of creditors, by J. E. Putnam had no value over and above the lien against it.

VI.

The Court erred in its decision that the Colorado Court determined by its orders and judgments that there was no beneficial interest in the land conveyed by Putnam to Standart, Assignee, and that the Assignee received merely the naked legal title which he could pass by his independent conveyance.

VII.

The Court erred in its decision in holding that the title of the interveners was good at law.

VIII.

The Court erred in its decision that there was no one in esse at the time the contract was made between plaintiff and the interveners who could attack the title for the reason that this is unsupported by any evidence.

IX.

The Court erred in its decision that the creditors of Crippen, Lawrence & Company were cut off and barred from asserting any interest in the property involved in this controversy.

X.

The Court erred in its decision that the interveners and their predecessor holding this title had acquired a title by adverse possession.

XI.

The Court erred in its decision that a title by adverse possession was such a title as satisfied and conformed to the requirements of the contract between the parties.

XII.

The Court erred in its decision and decree that the fund in the hands of the bank should be awarded to the interveners instead of to the plaintiff.

XIII.

The Court erred in the admission in evidence over the objection and exceptions of plaintiff of the affidavits of C. R. Nuttle, C. L. King and T. P. Mannion introduced as Exhibits 52, 53 and 54 respectively, reference to which *are* hereby made.

XIV.

The Court erred in the allowance of interest and rendering judgment therefor as against the plaintiff and in favor of the intervenors.

Wherefore, the said plaintiff and appellant, Liberty Oil Company, a corporation, prays that the decree and judgment herein may be reversed and corrected.

CHAS. G. YANKEY,
HARRY E. KARR,
Solicitors for Plaintiff.
HOLMES, YANKEY, HOLMES AND EATON,
KARR, HAMMOND & DARNALL,
Of Counsel.

Filed in District Court April 17, 1920.

Bond on Appeal.

Know all men by these presents, That we, Liberty Oil Company, as principal, and W. B. Ward and F. L. Carson, as sureties, of the county of Sedgwick, State of Kansas, are held and firmly bound unto the interveners above named in the sum of Five Hundred Dollars ($500.00), lawful money of the United States, to be paid to them and their respective executors, administrators and successors; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and each of our heirs, executors and administrators, by these presents.

Sealed with our seals and dated this 17 day of April, 1920.

241 Whereas, The above named Liberty Oil Company has prosecuted an appeal to the Circuit Court of Appeals of the United States for the Eighth Circuit to reverse the decree of the District Court for the District of Kansas, Third Division, in the above entitled cause:

Now, therefore, the condition of this obligation is such that if the above named Liberty Oil Company shall prosecute his said appeal to effect and answer all costs if he fail to make good his plea, then this obligation shall be void; otherwise to remain in full force and effect.

LIBERTY OIL CO., A CORPORATION,
By HOLMES, YANKEY, HOLMES & EATON,
Its Attys. of Record.

W. B. WARD.
F. L. CARSON.

COPY BOUND CLOS

STATE OF KANSAS,
County of Sedgwick, ss:

On the 8th day of April, 1920, personally appeared before me W. B. Ward and F. L. Carson, respectively known to me to be the persons described in and who duly executed the foregoing instrument as parties thereto, and respectively acknowledged, each for himself, that they executed the same as their free act and deed for the purposes therein set forth.

And the said W. B. Ward and F. L. Carson, being respectively by me duly sworn, says, each for himself and not one for the other, that he is a resident and householder of the said county of Sedgwick and that he is worth the sum of $500.00 over and above his just debts and legal liability and property exempt from execution.

[SEAL.]

W. B. WARD.
F. L. CARSON.

Subscribed and sworn to before me this 8th day of April, A. D., 1920.

N. P. BOWMAN,
Notary Public.

My Commission Expires May 15th, 1921.

The within bond is approved both as to sufficiency and form this 17th day of April, 1920.

JOHN C. POLLOCK,
Judge.

Filed in District Court April 17, 1920.

242 *Precipe for Transcript.*

To the Clerk of the Above Entitled Court and Solicitors for Appellee in the above entitled matter:

You are hereby notified that the appellant in the above entitled cause notifies you that said appellant designates for a tran-cript of the record in the above entitled action as requisite for the hearing of said cause in the appellate court the matters hereinafter set out, and the Clerk of the court is hereby directed to embody in said transcript the following matters, to wit:

1. Petition of the plaintiff:

2. Answer of the defendant.

3. Order of November 11, 1918, making interveners parties to the cause.

4. Answer and cross petition of interveners.

5. Answer and Reply of the plaintiff to the cross petition of the interveners.

6. Transcript of the evidence and of all of the proceedings had at the trial. This is also designated as the Bill of Exceptions.

7. Memorandum of decision on merits of the controversy.

8. Final judgment and decree filed April 17, 1920.

9. Petition on appeal.

10. Assignments of error on appeal.

11. Appeal bond.

12. Order allowing appeal.

13. Citation on appeal with waiver of service.

Appellant requests in accordance with the rules of the Circuit Court of Appeals that the copy of the contract which is attached to the petition and answer and also which appears in the transcript of the evidence be incorporated in the record only once, as required by such rules.

CHAS. G. YANKEY,
H. E. KARR,
Attorneys for Appellant.

The undersigned, attorneys for defendant and the interveners in the above entitled action hereby accept due service on us this 14th day of May, 1920, of the above precipe for transcript of the record in the above entitled matter.

J. H. KEITH,
JOHN J. JONES,
Attorneys for Appellees.

Filed in District Court May 15, 1920.

243 *Notice of Election to File Printed Transcript.*

To the Clerk of the United States District Court, District of Kansas, Third Division:

You are hereby notified that the plaintiff, Liberty Oil Company, Incorporated, elects to file in the Appellate Court a printed transcript of the record and its appeal herein prepared.

HOLMES, YAN-EY & HOLMES,
Attorneys for Liberty Oil Co.

Filed in the District Court May 15, 1920.

Clerk's Certificate to Transcript.

UNITED STATES OF AMERICA,
District of Kansas, ss:

I, Frank L. Campbell, Clerk of the District Court of the United States for the District of Kansas, do hereby certify the within and

foregoing to be a full, true and complete transcript of the pleadings, proceedings and record, now on file and of record in my office, in a certain cause lately in said court pending wherein The Liberty Oil Company, a corporation is plaintiff and The Condon National Bank, a corporation, and the Atlas Petroleum Company, a corporation; C. M. Ball, Isadore Litman, P. G. Keith and J. H. Keith, Interveners, are defendants, as it purports to contain, and is made pursuant to the præcipe filed herein.

I further certify that the original Waiver of Issuance Of Citation is transmitted herewith.

In Testimony Whereof, I hereunto set my hand and affix the Seal of said court, at my office, in Fort Scott, in said District of Kansas, this 12th day of July, A. D., 1920.

[Seal U. S. District Court, Third Division, District of Kansas.]

F. L. CAMPBELL,
Clerk,
By C. N. PRICE,
Deputy Clerk in Charge of the Third Division.

244 And thereafter the following proceedings were had in said cause in the Circuit Court of Appeals, viz:

(*Appearance of Mr. Harry E. Karr, Mr. Eduard M. Hammond, Mr. R. L. Holmes, and Mr. C. G. Yankey as Counsel for Appellant.*)

United States Circuit Court of Appeals, Eighth Circuit.

No. 5642.

LIBERTY OIL COMPANY, Appellant,

vs.

THE CONDON NATIONAL BANK et al.

The Clerk will enter my appearance as Counsel for the Appellant.
HARRY E. KARR.
EDWARD M. HAMMOND.
R. L. HOLMES.
C. G. YANKEY.

(Endorsed:) Filed in U. S. Circuit Court of Appeals, Jul. 29, 1920.

(*Appearance of Mr. Frederick W. Lehmann as Counsel for Appellant.*)

The Clerk will enter my appearance as Counsel for the Appellant.
FREDERICK W. LEHMANN,

(Endorsed:) Filed in U. S. Circuit Court of Appeals, Nov. 26, 1920.

245 (*Appearance of Messrs. Keith & Keith as Counsel for Appellees.*)

The Clerk will enter my appearance as Counsel for the Appellees.

J. H. KEITH,
WALTER S. KEITH,
Both of Coffeyville, Kansas.

(Endorsed:) Filed in U. S. Circuit Court of Appeals, Aug. 14, 1920.

(*Appearance of Mr. John J. Jones as Counsel for Appellees.*)

The Clerk will enter my appearance as Counsel for the Appellees.

JOHN J. JONES.

(Endorsed:) Filed in U. S. Circuit Court of Appeals, Aug. 17, 1920.

(*Order of Submission.*)

December Term, 1920.

Wednesday, January 5, 1921.

This cause having been called for hearing in its regular order, argument was commenced by Mr. Charles G. Yankey for appellant, continued by Mr. John J. Jones for appellees and concluded by Mr. Frederick W. Lehmann for appellant.

Thereupon, this cause was submitted to the Court on the transcript of the record from said District Court and the briefs of counsel filed herein.

246 (*Opinion.*)

United States Circuit Court of Appeals, Eighth Circuit, December Term, A. D. 1920.

No. 5642.

LIBERTY OIL COMPANY, a Corporation, Appellant,

vs.

THE CONDON NATIONAL BANK, a Corporation; ATLAS PETROLEUM Company, a Corporation; C. M. Ball, Isadore Litman, P. G. Keith, and J. H. Keith, Appellees.

Appeal from the District Court of the United States for the District of Kansas.

Mr. Charles G. Yankey and Mr. Frederick W. Lehmann (Mr. Harry E. Karr and Mr. Edward M. Hammond were with them on the brief), for appellant.

Mr. John J. Jones (Mr. J. H. Keith was with him on the brief), for appellees.

Before Hook and Carland, Circuit Judges, and Lewis, District Judge.

CARLAND, *Circuit Judge*, delivered the opinion of the Court.

Appellant commenced this action as an action at law against the Condon National Bank to recover the sum of $100,000.00, which the Bank held on deposit to be paid to either appellant or appellees as the terms of a contract between them should be or not be performed. The case although an action at law has been brought here by appeal instead of by writ of error. Section 1649*a* U. S. Comp. Stat., 39 Stat. 727, reads as follows:

"No court having power to review a judgment or decree rendered or passed by another shall dismiss a writ of error solely because an appeal should have been taken, or dismiss an appeal solely because a writ of error should have been sued out, but when such mis-
247 take or error occurs it shall disregard the same and take the action which would be appropriate if the proper appellate procedure had been followed."

We therefore disregard the mistake and take the action which would be appropriate if the proper appellate procedure had been followed. The Bank in its answer made the following allegations,

"That heretofore and on the 24th day of May, 1918, the Liberty Oil Company, incorporated, entered into a written contract with the Atlas Petroleum Company, a corporation, C. M. Ball, Isadore Litman, P. G. Keith, and J. H. Keith, a copy of which contract is attached to plaintiff's petition, marked Exhibit 'A,' reference to which contract is hereby made, as a part hereof, as fully and to the same extent and with like effect as *the* herein full- set out:

* * * * * * *

"That in accordance with and under and by virtue of said Exhibits 'A' and 'B' attached to plaintiff's petition, plaintiff paid to this defendant on the 24th day of May, 1918, the sum of One Hundred Thousand Dollars ($100,000) which said sum said defendant now has in its possession and under its control; that this defendant has no interest whatever in said sum of $100,000, except to see that the same is passed into the hands of the parties entitled thereto, and to discharge itself of all liability under said instrument in writing, copy of which is attached to plaintiff's petition, marked Exhibit 'B.'

"That the plaintiff herein has demanded of the defendant the said sum of $100,000, and that the said Atlas Petroleum Company, C. M. Ball, Isadore Litman, P. G. Keith and J. H. Keith have likewise and also demanded that the defendant herein pay and deliver to

them the said $100,000, so deposited with this defendant under said Exhibit 'B' of plaintiff's petition.

"This defendant, not knowing who is justly entitled to said sum of $100,000, has heretofore refused to pay or deliver the same to either the plaintiff or the said Atlas Petroleum Company, C. M. Ball, Isadore Litman, P. G. Keith and J. H. Keith, and now asks that the said Atlas Petfoleum Company, C. M. Ball, Isadore Litman, P. G. Keith and J. H. Keith, and each of them, be made parties
248 to this cause, and brought into this action, and required to set up their claim to said sum of $100,000."

The case subsequently came up for hearing upon the petition of appellant and the answer of the Bank. The court ordered that appellees other than the Bank be made parties to the action and that they should set up their claim or interest in the fund in controversy within twenty days. Appellees other than the Bank by answer and cross petition set forth their claim to the fund in controversy. Appellant answered the cross petition. The Bank paid the money into court and had nothing further to do with the controversy. The action between appellant and appellees other than the Bank proceeded as an action at law as it had been commenced. Seven months after issue joined the case was heard by the court, a jury being duly waived under the statute allowing a jury to be waived in law actions. The court found generally for the appellees other than the Bank and awarded judgment in their favor for the $100,000.00 and interest then on deposit in the registry of the court. No equitable right or claim to the fund was pleaded by either appellant or appellees other than the Bank. The only error insisted upon in this case is the sufficiency of the evidence to support the judgment, it being claimed that the evidence showed that appellees other than the Bank did not furnish an abstract of title to the real estate upon which the leases sold were given that was marketable, there being an alleged defect in what is known as the Crippen Lawrence & Co. tract. The question as to whether the evidence was sufficient to justify a finding in favor of appellees other than the Bank was in nowise raised in the trial court either by a request to find the facts or to declare the law. The evidence is in the record in the form of a bill of exceptions, a document unknown to a court of equity. The bill of exceptions does not disclose any ruling upon any request to find the facts or declare the law by the trial court.

On writ of error which ought to have been the process by which the case was removed to this court our power to review is confined to rulings of the trial court in matter of law. No such rulings having been assigned and argued there is nothing for this court to do except to affirm the judgment below. Assignment of error No. 13, in relation to the admission of evidence is not argued. It is claimed
however that in some way the answer by the Bank changed
249 what was a proceeding at law into a proceeding in equity triable here de novo. We think this view is erroneous for the following reasons. Assuming that the answer of the Bank has the same standing as a bill of interpleader under Sec. 274*b* Judicial Code,

38 Stat. 956, we can assume further that the answer was an equitable defense or proceeding, but that proceeding ended when the court ordered appellees other than the Bank to be made parties. The Bank paid the money into court and went its way released from all liability. The proceeding at law between the other parties went on. It is well settled that when a judgment of interpleader is rendered it puts an end to that proceeding. The parties who are ordered to interplead may commence an action at law or in equity as the facts warrant. In this case the action at law had been commenced and proceeded on to judgment. That the order directing appellees other than the Bank to be made parties to the suit commenced by appellant was an end of that proceeding is supported by Daniels' Chancery P. & P., Vol. 2, p. 1568; Lynch v. St. John, 8 Daly (N. Y.) 142; Feldman v. Grand Lodge A. O. U. W., 19 N. Y. Suppl. 73; Hechmer v. Gilligan, 28 W. Va. 750. Of course if it shall be claimed that the proceeding by the Bank was in accordance with the laws of Kansas the same result follows because code provisions in regard to interpleader are merely substitutes for the original bill in equity and are governed by the same principles. Atchison v. Scoville, 17 Kan. 17.

The proper procedure in actions at law tried by the trial court where a jury is waived has been stated at almost every term of this court. The cases bearing upon the subject both in the Supreme Court and this court are cited in Mason v. U. S., 219 Fed. 547, and in many cases since that case was decided, the last being U. S. v. A. T. & S. F. Ry., decided Jan. 12, 1921, not yet reported.

Judgment below affirmed.

Hook, Circuit Judge, dissents.

Filed March 9, 1921.

250 (*Decree.*)

United States Circuit Court of Appeals, Eighth Circuit, December Term, 1920.

No. 5642.

Wednesday, March 9, 1921.

LIBERTY OIL COMPANY, a Corporation, Appellant,

vs.

THE CONDON NATIONAL BANK, a Corporation; ATLAS PETROLEUM Company, a Corporation; C. M. Ball, Isadore Litman, P. G. Keith, and J. H. Keith.

Appeal from the District Court of the United States for the District of Kansas.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the District of Kansas, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged and decreed by this Court, that the decree of the said District Court, in this cause, be, and the same is hereby, affirmed with costs; and that The Condon National Bank, a Corporation, Atlas Petroleum Company, a Corporation, C. M. Ball, Isadore Litman, P. G. Keith and J. H. Keith have and recover against the Liberty Oil Company, a Corporation, the sum of twenty dollars for their costs herein and have execution therefor.

March 9, 1921.

251 In the United States Circuit Court of Appeals, Eighth Circuit.

No. 5642.

LIBERTY OIL COMPANY (a Corporation), Appellant,

vs.

THE CONDON NATIONAL BANK (a Corporation), ATLAS PETROLEUM Company (a Corporation), C. M. Ball, Isadore Litman, P. G. Keith, and J. H. Keith, Appellees.

Petition for Rehearing.

We very respectfully pray for a rehearing of this case. It was disposed of on questions of practice and procedure—purely formal matters. The merits of the controversy between the parties to the suit were not considered. Such a result is to be avoided
252 whenever it can be, for it may well be that the substantial right of the case is with the loser. What he was concerned about has not been heard. The paramount purpose of the law, the rendition of justice between the parties, has not been realized.

The court holds, (1) that the suit was an action at law and is subject to review only as such, although brought up on appeal, and (2) that the only assignment of error made, appropriate to an action at law, one in relation to the admission of evidence, was not argued and therefore is assumed to be waived.

We submit, with profound respect that the Court is in error as to both these propositions and that the suit is in equity and that "assignment of error No. 13 in relation to the exclusion of evidence was argued." Upon the merits the determination should be for the appellant.

I.

We submit that the case was a suit in equity and that it was tried and determined as such in the District Court, substantially even though quite informally. True it is that upon the trial some of the forms and terminology of a suit at law were used by counsel and by the Court, and so also were forms and terminology of a suit in equity.

The appellees other than the Bank were owners of certain oil properties which they proposed to sell to the appellant. The purchase price was $1,150,000 to be paid upon the owners furnishing an abstract showing "a good and marketable title." The appellant deposited $100,000 with the Bank, which was to go to the
253 owners, as part of the purchase price if the sale was consummated and to go to them as liquidated damages if the appellant breached its agreement to buy. If the owners failed to furnish such an abstract as was prescribed, the money deposited was to go back to appellant.

As it transpired the parties disagreed as to the abstract of title. The appellees contended that it was in accordance with the requirements of the contract, and the appellant that it was not. Each demanded the deposit of $100,000.00 from the Bank, the one as the stipulated damages for alleged breach of the contract, the other as entitled to its return because of the deficiency of the abstract of title. The bank disclaimed any interest in this controversy. It was willing to pay either of the parties and unwilling to pay both.

The appellant sued the bank, alleging the making of the contract, the deposit of the money thereunder, the insufficiency of the abstract of title, notice to the bank of such deficiency, demand for return of the money, refusal by the bank and conversion by the bank of the money to its own use. It alleged also performance by itself of its part of the contract and demanded judgment against the bank for $100,000.00 with interest from the date of demand and for costs and general relief.

Here now was a situation to which a bill of interpleader was most appropriate and essential to save the bank from the hazard of double payment, and from the expense and embarrassment of two law suits when it was indifferent to the controversy involved. Here
254 was the same thing demanded of the bank by the claimants, the adverse claims were derived from a common source, the bank claimed no interest in the subject matter, and it had incurred no independent liability to either claimant. For authority that this makes a case for interpleader in equity, we need but refer to Pomeroy's Equity Jurisprudence, Vol. 4, Sec. 1322.

The bank filed an answer to the petition of the plaintiff in which it admitted having the fund and alleged that it held it under the contract between the appellant and the appellees and that it had no interest therein, but that it was claimed by both sides and which of them was entitled thereto, it did not know, and so offered to pay the fund into court or to such person as the court might direct. It prayed that the owners be made parties and be required to set up their claim to the fund, and

"that the court herein make such order as seems to it meet and proper with reference to the disposition of said money, and that this defendant, upon compliance with said order, be discharged from all liability in connection therewith, for its costs, and for general relief." (Rec. 8.)

The parties, plaintiff and defendant, and the court, treated this answer as making the case one in equity, for an order was entered making the interveners (owners) parties to the cause, as follows, viz:

"It is therefore Ordered, Adjudged, and Decreed that the Atlas Petroleum Company, C. M. Ball, Isadore Litman and P. G. Keith and J. H. Keith be made parties to said cause, and that they and each of them be required to set up what claim or interest, if
255 any, they have in said controversy, and in or to the money held by the defendant in this action, within twenty days from the date hereof. Thereupon said defendants, Atlas Petroleum Company, C. M. Ball, Isadore Litman and P. G. Keith and J. H. Keith, and each of them, by and through their attorney, John J. Jones, entered their voluntary appearance in said cause, and waived the issuance and service of process and asked, and for good cause shown, were given to and including the 2nd day of December, 1918, to plead herein and said cause continued.

JOHN C. POLLOCK, *Judge.*"

This court says:

"Assuming that the answer of the bank has the same standing as a bill of interpleader under Sec. 274*b* Judicial Code, 38 Stat. 956, we can assume further that the answer was an equitable defense or proceeding, but that proceeding ended when the court ordered appellees other than the bank to be made parties. The bank paid the money into court and went its way released from all liability. The proceeding at law between the other parties went on. It is well settled that when a judgment of interpleader is rendered it puts an end to that proceeding. The parties who are ordered to interplead may commence an action at law or in equity as the facts warrant. In this case the action at law had been commenced and proceeded on to judgment. That the order directing appellees other than the bank to be made parties to the suit commenced by appellant was an end of that proceeding is supported by Daniels Chancery P. & P. Vol. 2 p. 1568; Lynch v. St. John, 8 Daly (N. Y.) 142; Feldman v. Grand Lodge A. O. U. W., 19 N. Y. Suppl. 73; Hechmer v. Gilligan, 28 W. Va. 750. Of course, if it shall be claimed that the pro-
256 ceeding by the bank was in accordance with the laws of Kansas the same result follows because code provisions in regard to interpleader are merely substitutes for the original bill in equity and are governed by the same principles. Atchison v. Scoville, 17 Kans. 17."

This decretal order was entered November 12th, 1918, and the court assumes that the case, as to the bank was then and thereby ended, for the court says that the informal interpleader proceeding instituted by the bank "ended when the court ordered appellees other than the bank to be made parties. The bank paid the money into court and went its way released from all liability." The record does not support this statement. The owners were simply made parties, entered their appearance and were given time to plead, "and said cause continued."

This meant the entire cause as it stood with the owners brought in as interveners. The cause as to the bank could not upon that state of the record be disposed of. The facts were such as disclosed by subsequent pleadings and admissions of the parties, that the bank was entitled to be dismissed, but that was not yet apparent. The subsequent pleadings and the evidence might show independent claims by the parties to the money in controversy. The decretal order made no adjudication either as between the bank and the claimants or as between the claimants themselves.

On December 24th, 1918, the owners, as interveners filed their answer and cross-petition (Rec. 12 et seq.) to the original petition.

By their answer they denied the right alleged by the plain-
257 tiff, (the appellant) and alleged that the ab-tract showed a good and marketable title; that the objections made to it by appellant were not valid; that they had fully performed the contract on their part, and they prayed that "the plaintiff take nothing herein and that these interveners recover of said plaintiff as prayed in their cross-petition."

In their cross-petition, the interveners set up the contract of sale and purchase, the deposit of the money with the bank; that they had furnished a proper abstract and had in every respect fully performed the contract on their part.

The interveners further alleged that they had at all times offered full performance of the contract "and are now ready, able and willing and hereby offer to make good and deliver said title to the plaintiff herein, and that they are now entitled to receive the $100,000.00 deposited by the plaintiff with the defendant (the bank) herein, and for judgment therefor, and for the further sum of $100,000.00."

The prayer was "for judgment against the plaintiff herein for the sum of $1,100,000 and for an order directing the defendant herein to pay the $100,000 now in its possession, to these interveners, for costs and for general relief."

Here was a suit for specific performance injected into the case. As to the money in the bank the prayer was "for an order directing the defendant herein (the bank), to pay the $100,000 now in its possession to these interveners." The bank was still a party to the suit.

To this cross-petition the plaintiff made answer, denying
258 the right of the interveners and asserting its own, alleging also that the bank had "converted and appropriated the said sum to its own use," and prayed to "recover as prayed for in its petition," (Rec. 16) which was for "judgment against the defendant (the bank) in the sum of one hundred thousand dollars with interest, etc."

As to the interveners it prayed simply that they "take nothing herein" * * * and that it be adjudged and decreed that the interveners have no interest or claim in the said sum of One Hundred Thousand Dollars."

Thus the plaintiff and the interveners alike in their pleadings dealt with the bank as still a party to the suit.

Upon the issues thus made the suit and the entire suit came on for trial on November 13th, 1919, and on that day it was tried (Rec.

16). The record shows that "the defendant, the Condon National Bank, appeared by Mr. John J. Jones, its solicitor." (Rec. 16.)

The entire case was tried as one. In the course of the trial of this one case, upon the statement of counsel that the bank had paid the money into the registry of the court, the court announced orally in passing, "the bank discharged." It entered no order at the time, and what was done was simply an announcement of what the disposition of the case would be so far as the bank was concerned.

The parties proceeded, the plaintiff to show that the abstract of title was deficient and the intervener to show that it was good. The court then took the case under advisement, and on February
259 7th, 1920, rendered its opinion upon the entire case, determining every question in the case as between all the parties thereto and entered a judgment or decree accordingly on April 17th thereafter.

The record, p. 237, shows the judgment or decree, and makes plain that it is in the one final adjudication of all the issues as between all the parties. It is as follows, viz:

"Now on this 17th day of April, 1920, this cause came on for decision by the Court, the jury having been duly waived in writing by all parties.

The court having had said cause under advisement as per order of November 13th, 1919, and being fully advised in the premises and after full consideration thereof the court does find for the defendant, The Condon National Bank and for the interveners, Atlas Petroleum Company, C. M. Ball, Isadore Litman, P. G. Keith and J. H. Keith, to which the plaintiff at the time excepted and excepts.

The court further finds that the interveners were entitled to the delivery to them of the One Hundred Thousand ($100,000.00) Dollars since the 30th day of June, 1918, and that the possession of the same was withheld through the direction of the plaintiff and that the interveners are entitled to recover interest at the rate of six per cent per annum from the 30th day of June, 1918, on said sum from the plaintiff, to which the plaintiff at the time duly excepted and excepts.

It is now therefore considered, ordered and adjudged that the plaintiff take nothing as against the defendant, The Condon National Bank or as against the interveners, Atlas Petroleum Company, C. M. Ball, Isadore Litman, P. G. Keith, and J. H. Keith or either or any of them, and judgment is hereby rendered
260 against the plaintiff for the costs herein incurred, made and expended by the defendant, The Condon National Bank, and the interveners, Atlas Petroleum Company, C. M. Ball, Isadore Litman, P. G. Keith and J. H. Keith and each and all of them, taxed at — Dollars, to which the plaintiff at the time excepted and excepts.

That the interveners, Atlas Petroleum Company, C. M. Ball, Isadore Litman, P. G. Keith and J. H. Keith do have and recover from the plaintiff, Liberty Oil Company, the sum of Ten Thousand Seven Hundred Fifty ($10,750.00) Dollars, which is the interest on said sum of One Hundred Thousand ($100,000.00) Dollars at

six per cent from the 30th day of June, 1918, to which the plaintiff at the time duly excepted and excepts.

That the defendant, The Condon National Bank, having heretofore paid into the hands of the court the funds in its possession it is discharged from all further liability in this cause. That the interveners, Atlas Petroleum Company, C. M. Ball, Isadore Litman, P. G. Keith and J. H. Keith have judgment for One Hundred Thousand Dollars ($100,000.00) now in the registry of the court, and the registrar of the court be, and he is hereby, ordered and directed forthwith to pay to said interveners, Atlas Petroleum Company, C. M. Ball, Isadore Litman, P. G. Keith and J. H. Keith, the funds now in the registry of the court, to wit One Hundred Thousand Dollars ($100,000.00) to each and every part of which plaintiff at the time duly excepted and excepts. All of which exceptions were by the court allowed. The plaintiff in open court and at the time of the rendering of said judgment gave notice of its appeal to the United States Circuit Court of Appeals for the Eighth Circuit.

It is further ordered on application of the plaintiff that the execution of said judgment be stayed for the period of thirty days
261 and that the plaintiff shall have such time within which to execute a supersedeas bond in the sum of Fifteen Thousand Dollars ($15,000.00), which bond, approved by the Clerk of the Court, shall stay said execution pending said appeal.

It is further ordered upon application of the plaintiff that the plaintiff have ninety days within which to prepare and serve a bill of exceptions, a transcript of the record and a statement of the evidence on appeal, and that the defendant and interveners have fifteen days after service of the same upon them to suggest amendments. Said bill of exceptions to be settled and approved by the Court upon five days' notice of the settling of the same by either party to the other.

JOHN C. POLLOCK,
Judge."

It is obvious that from beginning to end the parties and the trial court treated the entire proceeding as one suit. The rights of the bank and of the several claimants to the fund in its possession were disposed of in one judgment or decree. The order of dismissal as to the bank was not made until all the pleadings were filed, all the testimony submitted and the case fully heard as between all the parties, and then only as a part of the one final decree.

Thus it appears that the decretal order of November 12th, 1918, had no such scope in fact as was attributed to it by this court. It was not a judgment of interpleader, that is, it did not pronounce upon the issues raised by the bill of interpleader. It simply brought in the outstanding claimants and required them to plead.

As to the legal effect of this order the court says: "that
262 the order directing appellees other than the bank to be made parties to the suit commenced by appellant was an end of that proceeding is supported by Daniel's Chan. P. & P., Vol. 2 p. 1568, etc."

We respectfully submit that the conclusion does not follow from the premises stated. It all depends upon the state of the case. The Chancellor may in his discretion deal with the issue of interpleader as distinct and separate, and leave the claimants to settle matters between themselves at law or in equity, or he may if the case is ripe therefor dispose of it in its entirety by one decree. And Daniel so holds. Where cited by the court, he says:

"The only question which is strictly before the court at the hearing is, whether the defendants should interplead. It is not necessary for them to enter into evidence as against each other.

Courts of Equity dispose of questions arising upon bills of interpleader in various modes, according to the nature of the question and the manner in which it is brought before the court. An interpleading bill is considered as putting the defendants to contest their respective claims, just as a bill does which is brought by an Executor or Trustee to obtain the direction of the court, upon the adverse claims of different defendants. If at the hearing, the question between the defendants is ripe for decision, the court will make a decree."

The case of Lynch vs. St. John, 8 Daly 142, cited by the court does not militate against the doctrine of Daniel's text. It holds simply that an order granting a motion to interplead and dismissing the original defendant was a final order and appealable as such.

Nor does the case of Feldman vs. Grand Lodge, 19 N. Y.
263 Supp. 73, decide anything more, and this only by inference than was decided in Lynch vs. St. John.

In Hechmer vs. Gilligan, 28 W. Va. 750, a demurrer to the bill of interpleader was overruled, and the case was heard on its merits and adjudicated as between the several claimants. On appeal it was held that the bill of interpleader could not be sustained because it was filed by the treasurer of the Company which held the fund in dispute, instead of by the Company itself. Nothing else was decided.

Daniel cites in support of the text which we have quoted State Ins. Co. vs. Gennett, 2 Tenn. Ch. 100. The opinion in this case was by Chancellor Cooper. He says:

"The defendants, in order to a speedy decision of the matters in controversy between them, have agreed to submit the bill, answers, exhibits, proof and previous proceedings, at once to me for final determination. This they may do, the agreement, in effect conceding that the bill has been properly filed, and that the complainant is entitled to the usual decree of interpleader. * * * That decree is that the bill is properly filed, that the complainant is dismissed with costs, and that the defendants interplead. * * * This settles the case, so far as the complainant is concerned, and is usually in England, accomplished by motion. * * * If, at the hearing, the case between the defendants is ripe for a decision, the court will decide it, and make a final decree at once. * * * If it is not, the court merely decides that the bill is properly filed

dismisses the plaintiff with his costs up to that time, and directs an action, or an issue, or a reference to a master, to ascertain contested facts, as may be best suited to the nature of the case. * * *
264 Or the court may leave it to the defendants to prepare the case between them as they may be advised, which would be the effect of a general order to interplead."

We have quoted the paragraph of the opinion in full, omitting only the cases cited in the course of it.

The case of Atchison vs. Scoville is cited by the Court as from 17 Kans. 17. This is a typographical error. It should be 13 Kans. 17. The case holds as stated and what we take to be the law, that the Code provisions of Kansas in regard to interpleader do not supersede the old equitable action "but," quoting from the head note p. 18, "in cases where such remedy (Code provision) might be substituted for the action of interpleader, the two remedies are concurrent."

There was nothing determined by the decretal order in this case quoted above, except that the owners be made parties and set up what claim, if any, they had to the fund. The bank was not dismissed from the suit. The interveners might show when they appeared that there was no warrant for interpleading them. They might disclaim any interest, or setup an independent claim to the fund. There was in any event as yet no adjudication by the court either as between the bank and the claimants nor as between the claimants themselves. It was competent for the court when it came to make final disposition of the cause as to one of the parties, to make such disposition of it as to all of them, in other words to determine the entire case in one and the same decree.

In Rowe vs. Admrs., of Hoagland, 7 N. J. Eq. 131, the
265 procedure was substantially as here, that is the entire controversy was heard and adjudicated at one time. The Chancellor said:

"On a bill of interpleader there should, regularly, be a decree that the defendants interplead, and the case then becomes a case between the defendants, as between a complainant and defendant. But as the proofs have been taken on both sides as between the defendants, and the cause is brought to hearing and is ready for a decision, both as between the defendants and as between them and the complainants, it may now be heard and a final decree made."

This case was cited with approval in Executors of Condict v. King 13 N. J. Eq. 375, l. c. 383. The court said:

"As to the mode of proceedings, or the form of the decree, there can be no difficulty. The court disposes of the questions arising upon bills of interpleader in various modes, according to the nature of the question and the manner in which it is brought before the court. If, at the hearing, the question between the defendants is ripe for decision, the court decides it and pronounces a final decree. This course was adopted in the greatly contested case of Hendrickson v.

Decow, Saxton 593, and in Rowe v. Admrs. of Hoagland, 3 Halst. Ch. R. 139.

If at the hearing, the case is not ripe for decision, the court directs an action, or an issue, or a reference to a master, as may be best suited to the nature of the case. Angell v. Hadden, 16 Vesey 203; Seaton's Decrees 340; City Bank v. Bangs, 2 Paige 570; 3 Daniell's Ch. Pr. 1765."

This practice obtained in the English Courts of Chancery
266 and was followed by the Chancery Courts of New York.

In City Bank vs. Bangs, 2 Paige Ch. Rep. 570 l. c. 572, the Chancellor said:

"It also appears from the English reports that the testimony is sometimes taken, as to the rights of the defendants between themselves, previous to a decree to interplead. (Beymer v. Buchanan, 1 Cox's Cas. 425. Duke of Bolton v. Williams, 4 Bro. C. C. 297). In those cases and also where the right of one defendant is admitted by the answer of the other, or the bill is taken as confessed as to one, the court settles the rights of the parties at once, and makes a final decree as to those rights, and as to the disposition of the fund in controversy. (Hodges v. Smith, 1 Cox's Cas. 357).

In Gibson vs. Goldthwaite, 7 Ala. 281, the court said (quoting from 42nd Am. Dec. 592):

"In respect to the form of the decree, the defendants had answered and taken testimony, the cause was ripe for a hearing, and it was competent for the Chancellor to have adjusted the rights of the parties without directing an action, issue, or reference to the master. This has already been shown to be the correct practice where a case of interpleader is brought to a hearing under such circumstances."

It is also the frequent practice in the Federal Courts to settle all the issues between all the parties upon one hearing and on one decree. Among the cases in which that has been done, the propriety of the proceeding being unchallenged, are the following:

McNamara vs. Life Ins. Co., 114 Fed. 910.
267 Mutual Life Ins. Co. vs. Lane, 151 Fed. 276.
Mutual Life Ins. Co. vs. Bank, 173 Fed. 390.
Union Pacific Co. vs. Belek, 211 Fed. 699.
Thomas Kay, etc. Co. vs. Sprague, 259 Fed. 338.

That the issue as between the claimants might have been settled in a suit at law does not alter the character of the interpleader proceeding. To try the case as an entirety and to dispose of it in one decree is not only in harmony with the ancient chancery practice as the authorities cited show, but is in strict conformity with Equity Rule 23 which provides that:

"If in a suit in equity a matter ordinarily determinable at law arises, such matter shall be determined in that suit according to the principles applicable, without sending the case or question to the law side of the court."

Take this rule in connection with Section 274*b*, Judicial Code 38 Stat. 956 and we have express sanction for what was done. This section provides expressly that an equitable controversy may be injected into a suit at law, by answer and without the necessity of filing a bill on the equity side, and the party doing this is to have the same rights as if he had filed a bill. And in such a case if review is sought, "whether such review be sought by writ of error or by appeal the appellate court shall have full power to render such judgment upon the records as law and justice shall require."

Here was a controversy which in its entirety was of equitable cognizance, and it was tried so far as substance is concerned as a suit in equity is tried and from the judgment rendered an appeal
268 was taken and we submit that the case should be reviewed as if on appeal.

It is evident from the record that counsel in the trial of the case had some question as to whether the suit was at law or in equity. They therefore employed the forms and the terminology of both law and equity practice. In substance there was no difference on which side of the court the case was assumed to be docketed. A jury was waived by written stipulation. This is a well recognized procedure in a case at law. It does not obtain in equity practice. The case was in fact tried by the court, and this would be the usual procedure in equity. All the testimony offered, either that by witnesses or by documents was received by the court and is contained in the record. True it was as the court says "in the form of a bill of exceptions, a document unknown to a court of equity." But this bill of exceptions also conforms to what is known to a court of equity and that is a statement of the evidence approved by the court or judge as per equity rule 75. The evidence is in the record not only as a bill of exceptions, but in fact and by formal designation as "a bill of exceptions, a transcript of the record and a statement of the evidence on appeal." The final paragraph of the judgment provides for a document with this triple designation (Rec. 238).

The judge formally certifies to the document as a bill of exceptions and then proceeds (Rec. 225):

"It is further ordered that the foregoing transcript of the evidence introduced at the trial and of all of the proceedings occurring at the trial be and the same are hereby approved as a full and
269 complete transcript and statement of all the evidence introduced and offered, and of all the proceedings appearing at the trial and the same is ordered filed in this cause as such transcript and statement."

We may omit from this record all the terminology appropriate only to the trial of a suit at law and all the procedure appropriate only to such a trial and we have left a suit of equitable cognizance tried as such and so appealed.

If when the bank was sued by one of the claimants it had filed a formal bill of interpleader, bringing in all the claimants and they had all appeared and set up their respective claims by answer to the

bill and by cross-bills against each other and the court had heard the case as one, and determined all the issues by one decree, there could be no question that the suit was, as to all its issues a suit in equity and appealable as such. What is wanting here to such a situation? Nothing but matter of form. The pleadings, informal though they may be, present the issues as to each and all the parties clearly and definitely. No elaboration of form could help to present them more clearly or more definitely. The evidence, and all the evidence, was heard in open court, precisely as would have been done in a suit in equity. No special findings of fact or declarations of law were asked or made and this is consonant with equity procedure. A statement of the evidence on appeal was prepared and approved by the judge, as should be done where an appeal is to be taken, and that it was also called a bill of exceptions, a docu-
270 ment unknown to equity did not make it any the less a statement of the evidence. So we have contained within the record before this court every essential feature of a suit in equity, and the case presented by the record in such manner, that a determination of the case upon its merits can be had, without supplementing that record in any regard.

Clearly applicable to such a situation are the provisions of Sec. 269 of the Code of Judicial Procedure as amended by the Act of February 26th, 1919, c. 48, which declare, that:

"On the hearing of any appeal, certiorari, writ of error, or motion for a new trial, in any case, civil or criminal, the court shall give judgment after an examination of the entire record before the court without regard to technical errors, defects, or exceptions which do not affect the substantial rights of the parties."

This is the last, the most authoritative and most comprehensive expression of the law with respect to the significance of mere form in the law. It is the expression of a liberal spirit and its terms are to be liberally construed. It calls for a determination of the controversy between the parties hereto upon the merits and as their substantial rights may require.

II.

Dealing with the case as a suit at law the court thus disposes of it, viz:

"On writ of error which ought to have been the process by which the case was removed to this court our power to review is confined to rulings of the trial court in matter of law. No such rul-
271 ings having been assigned and argued there is nothing for this court to do except to affirm the judgment below. Assignment of error No. 13, in relation to the admission of evidence is not argued."

The statement that "assignment of error No. 13 in relation to the admission of evidence is not argued," with the implication that it was therefore waived, is a mistake.

The printed brief on file in the case states p. 5, that the contentions of the plaintiff in error are two, the first being that the deed from Standart, as trustee, from which the interveners derived title was invalid, and the second that good and marketable title could not be shown by adverse possession, or if so, it could not be done by affidavits, but must be by testimony "submitted in open court or upon notice to the other side and a full opportunity to cross-examine and contradict." This second contention related to the affidavits of C. R. Nuttle, C. L. King and T. P. Mannion, Exhibits 52, 53 and 54. Rec. 118-120.) They were all to one effect, general statements that interveners and their grantors had been in open peaceable possession of the property involved since 1896. These affidavits were objected to when offered, the ruling admitting them excepted to at the time and error properly assigned upon the ruling in the Assignment of Errors.

The second section of appellant's brief pp. 13 to 22 deals with efforts to support the title shown by the abstract, which are summed up under two heads, the second being "Title by adverse possession against those persons constituting the heirs at law of one of the members of the firm of Crippen, Lawrence & Company" p. 14. It is to this that the affidavits of Nuttle, King and Mannion relate.

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The brief from p. 17 to p. 22 is taken up with argument of the proposition that title by adverse possession cannot be shown by ex parte affidavits. We repeat, that is the proposition involved in assignment No. 13. And it is definitely presented in the argument. It is said p. 17 that the District Court held that the defendants had title by adverse possession, and the question is put, p. 19, "against whom the adverse possession operated and how it was proved." The next paragraph p. 19 designates those against whom the possession operated and says that "these persons have interests in this property * * * which can only be barred in one of two ways, viz.: assignment or title adverse for the statutory period. They did not obtain the first and relied upon the second."

Then follows the criticism of the proof offered.

"Yet, consider the insufficient proof of such possession. Three persons, one of them once having title by record after the Standart deed (C. R. Nuttle) in the most general terms make affidavit that C. R. Nuttle and those under whom he claims have been in open, notorious, absolute and peaceable possession since 1896, and have paid taxes thereon and no one else has ever laid any claim to the property."

This clearly identifies the affidavits mentioned in assignment No. 13, i. e. those of Nuttle, C. L. King and T. P. Mannion. They were all of one and the same purport. Surely the failure to mention King and Mannion explicitly was of no significance. If

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one was improperly received in evidence so were the others. And it is objected to all of them in mass pp. 19 and 20 that

"These affiants do not go upon the witness-stand in open court and submit themselves to cross-examination, but the defendants by such proof would cast upon the plaintiff the hazard of a title to a one-third interest—an interest taking the contract as a basis—is worth over $300,000, and this interest is sought to be barred on such proof."

Kansas authorities upon the subject are cited and discussed as being unequivocally against such evidence, and then p. 22 the argument concludes:

"The counsel for the plaintiff cannot see any difference in the cases cited and the facts now before the court. The Kansas Supreme Court without qualification held proof by affidavit could not make adverse possession. That is what the defendants rely upon—that and nothing else—and we earnestly and respectfully submit that the court below should have followed the decision of the highest court of record in the State of Kansas and in not doing so, deprived the plaintiff of valuable rights."

From the statement of the court that "Assignment of No. 13 is relation to the admission of evidence is not argued" we infer that the court takes the objection involved in the assignment as waived and assent by us that the testimony objected to was competent to show a good and marketable title in the interveners. Certainly nothing of the kind was intended. The Nuttle affidavits were objected to when they were offered and exception taken to their being
274 received in evidence (Rec. 117). The District Court as shown by the last paragraph, but one, of the opinion dealt with them as competent and material evidence (Rec. 286). An Assignment of Error was based on this action, and it was presented as a vital point of contention in the brief and supported by argument which whether to be regarded as forcible or feeble was certainly sufficient to preclude any idea of waiver of the contention.

When the Court dealt with this case as one at law and before it on writ of error, the appellant was entitled to have this question passed upon and to take it as waived for lack of argument and so not deciding it when manifestly a waiver was not intended and an argument was at least attempted, is a manifest grievance which should not be denied appropriate redress.

III.

The decision upon the merits should be for the appellant. The state of the title to the property was such that the appellees and the court below felt it necessary to call in the aid of adverse possession and the only evidence offered to show such possession was in the form of very general ex-parte affidavits, of which the appellant, in any suit against it, could not avail itself. But the opinion of this

court does not deal with the merits and so no question in relation thereto is presented for discussion and it seems therefore inappropriate at the present juncture to do more in that behalf than invoke the argument contained in our brief on file and made at the hearing.

275 In Conclusion.

In any event the case should be reheard that the controversy between the parties—who is entitled to the fund of $100,000.00 now in the registry of the court—may be decided according to the right of the matter. If the case is as we think one appropriately to be dealt with as in equity, then it should be reviewed as on appeal. If on the other hand the case is held to be one at law, it should still be reheard and the very substantial question determined—whether in a case like this, title by adverse possession may be shown by ex-parte affidavits. The appellant has not obtained the measure of review to which it was entitled either at law or in equity and so we most earnestly and respectfully pray the court to grant a rehearing herein.

HARRY E. KARR,
EDWARD M. HAMMOND,
CHARLES G. YANKEY,
F. W. LEHMANN,
Solicitors and of Counsel for the Appellant,
The Liberty Oil Company.

We, Harry E. Karr, Edward M. Hammond, Charles G. Yankey and F. W. Lehmann, hereby certify that we are the solicitors and of counsel for the Liberty Oil Company, the appellant in the above entitled action, that the foregoing petition for rehearing is not presented for purposes of delay or vexation, but is in our opinion
276 well founded in law and fact and proper to be filed herein.

HARRY E. KARR,
EDWARD M. HAMMOND,
CHARLES G. YANKEY,
F. W. LEHMANN,
Solicitors and of Counsel for the Appellant,
The Liberty Oil Company.

(Endorsed:) Filed in U. S. Circuit Court of Appeals, Apr. 18, 1921.

277 (*Order Denying Petition for Rehearing.*)

May Term, 1921.

Thursday, May 12, 1921.

This cause came on this day to be heard upon the petition for a rehearing, filed by Counsel for Appellant.

On consideration whereof, it is now here ordered by this Court, that said petition for a rehearing of this cause, be, and the same is hereby, denied, Judge Hook dissenting.

May 12, 1921.

(*Motion of Appellant to Stay Mandate.*)

Comes now the Liberty Oil Company, appellant herein, and respectfully shows to the Court that it desires to apply to the Supreme Court for a writ of certiorari in this cause and so respectfully requests a stay of mandate herein for a period of sixty days.

F. W. LEHMANN,
CHARLES G. YANKEY, AND
HARRY E. KARR,
Solicitors and of Counsel for the Liberty Oil Company.

(Endorsed:) Filed in U. S. Circuit Court of Appeals, May 16, 1921.

278 (*Order Staying Issuance of Mandate.*)

May Term, 1921.

Monday, May 23, 1921.

Upon consideration of the motion of appellant for a stay of the mandate in this cause for a period of sixty days pending an application to the Supreme Court of the United States for a writ of certiorari, It is now here ordered that the issuance of the mandate of this Court be, and the same is hereby, stayed for sixty days from and after the date of the order of this Court denying the petition for a rehearing and if said application is filed in and presented to the Supreme Court within that period of time the issuance of the mandate will then be withheld until the same has been disposed of.

May 23, 1921.

279 (*Clerk's Certificate.*)

United States Circuit Court of Appeals, Eighth Circuit.

I, E. E. Koch, Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, do hereby certify that the foregoing contains the transcript of the record from the District Court of the United States for the District of Kansas as prepared, printed and certified by the Clerk of said District Court to the United States Circuit Court of Appeals in pursuance of the Act of Congress, approved February 13, 1911, and full, true and complete copies of all the pleadings, record entries and proceedings, including the opinion, had and filed in the United States Circuit Court of Appeals except the full captions, titles and endorsements omitted in pursuance of the rules of the Supreme Court of the United States, in a

certain cause in said Circuit Court of Appeals wherein Liberty Oil Company was Appellant and The Condon National Bank, et al., were Appellees, No. 5642, as full, true and complete as the originals of the same remain on file and of record in my office.

In testimony whereof, I hereunto subscribe my name and affix the seal of the United States Circuit Court of Appeals for the Eighth Circuit, at office in the City of St. Louis, Missouri, this twenty-fifth day of May, A. D. 1921.

[Seal of the United States Circuit Court of Appeals, Eighth Circuit.]

E. E. KOCH,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

280 United States Circuit Court of Appeals for the Eighth Circuit.

No. 5642.

LIBERTY OIL COMPANY (a Corporation), Appellant,

vs.

THE CONDON NATIONAL BANK (a Corporation), Appellee, and Atlas Petroleum Company (a Corporation), C. M. Ball, Isadore Litman, P. G. Keith, and J. H. Keith, Intervenors, Appellees.

Stipulation as to Return to Writ of Certiorari.

In view of the granting by the Supreme Court of the United States on the fourteenth day of November, A. D. 1921, of a writ of certiorari in this cause directed to the Honorable the Judges of the United States Circuit Court of Appeals for the Eighth Circuit, it is stipulated that the certified transcript of record on file in the office of the Clerk of the Supreme Court of the United States can be taken as a return to said writ.

F. W. LEHMANN,
C. G. YANKEY,
Counsel for the Liberty Oil Company.
J. H. KEITH,
JOHN J. JONES,
Counsel for the Condon National Bank, Atlas Petroleum Co., C. M. Ball, Isadore Litman, P. G. Keith and J. H. Keith.

(Endorsed:) No. 5642. United States Circuit Court of Appeals for the Eighth Circuit. Liberty Oil Company, vs. Condon Nat'l Bank, et al. Stipulation as to return to writ of certiorari. Filed Dec. 2, 1921, E. E. Koch, Clerk.

281 UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the United States Circuit Court of Appeals for the Eighth Circuit, Greeting:

Being informed that there is now pending before you a suit in which Liberty Oil Company is appellant, and The Condon National Bank, appellee, Atlas Petroleum Company, C. M. Ball, Isadore Litman, P. G. Keith and J. H. Keith, interveners, are appellees, No. 5642, which suit was removed into the said Circuit Court of Appeals by virtue of an appeal from the District Court of the United States for the District of Kansas, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Circuit Court of Appeals and
282 removed into the Supreme Court of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable William H. Taft, Chief Justice of the United States, the nineteenth day of November, in the year of our Lord one thousand nine hundred and twenty-one.

WM. R. STANSBURY,
Clerk of the Supreme Court of the United States.

[Endorsed:] File No. 28,322. Supreme Court of the United States, No. 367, October Term, 1921. Liberty Oil Company vs. The Condon National Bank et al. Writ of Certiorari. Filed Dec. 2, 1921. E. E. Koch, Clerk.

283 *Return to Writ.*

UNITED STATES OF AMERICA,
Eighth Circuit, ss:

In obedience to the command of the within writ of certiorari and in pursuance of the stipulation of the parties, a full, true and complete copy of which is hereto attached, I hereby certify that the transcript of record furnished with the application for a writ of certiorari in the case of Liberty Oil Company, Appellant, v. Condon National Bank, et al., No. 5642, is a full, true and complete transcript of all the pleadings, proceedings and record entries in said cause as mentioned in the certificate thereto.

In testimony whereof, I hereunto subscribe my name and affix the seal of the United States Circuit Court of Appeals for the Eighth Circuit, at office in the City of St. Louis, Missouri, this third day of December, A. D. 1921.

[Seal of the United States Circuit Court of Appeals, Eighth Circuit.]

E. E. KOCH,
Clerk U. S. Circuit Court of Appeals
for the Eighth Circuit.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921.

No. 98

LIBERTY OIL COMPANY, PETITIONER,

vs.

THE CONDON NATIONAL BANK (A CORPORATION), RESPONDENT, AND ATLAS PETROLEUM COMPANY (A CORPORATION), C. M. BALL, ISADORE LITMAN, P. G. KEITH, AND J. H. KEITH, INTERVENERS, RESPONDENTS.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

FREDERICK W. LEHMANN,
HARRY E. KARR,
EDWARD M. HAMMOND,
CHARLES G. YANKEY,
Of Counsel for the Petitioner.

(28,322)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921.

No. 367.

LIBERTY OIL COMPANY (A CORPORATION), PETITIONER,

vs.

THE CONDON NATIONAL BANK (A CORPORATION), RESPONDENT, AND ATLAS PETROLEUM COMPANY (A CORPORATION), C. M. BALL, ISADORE LITMAN, P. G. KEITH, AND J. H. KEITH, INTERVENERS, RESPONDENTS.

PETITION FOR WRIT OF CERTIORARI.

Now comes the Liberty Oil Company and respectfully prays this court to grant a writ of *certiorari* herein to the United States Circuit Court of Appeals for the Eighth Judicial Circuit to remove therefrom, for review here, the record in the cause therein pending, numbered 5642, in equity, wherein your petitioner is appellant and the Condon National Bank, the Atlas Petroleum Company, C. M. Ball, Isadore Litman, P. G. Keith, and J. H. Keith are appellees, and in support of its petition your petitioner states:

1. The controversy herein grows out of a contract between the respondents, other than the Condon National Bank, hereinafter called the interveners, and the petitioner for the sale by those respondents to the petitioner of certain oil properties in the State of Kansas. The purchase price was $1,150,000, to be paid upon the interveners furnishing an abstract showing "a good and marketable title." The petitioner was to have seven days in which to examine the abstract, and in the event of defects being disclosed the vendors were to have thirty days in which to perfect the title. The petitioner deposited with the bank $100,000, which was to be in part payment if the transaction was consummated, and if the petitioner failed to carry out the agreement of purchase on its part was to go to the interveners as liquidated damages for breach of contract and the contract itself was to become null and void. If, however, the interveners failed to show a good and marketable title to the properties the money deposited was to be returned to the petitioner and the contract was to become null and void (Rec., pp. 21-24).

The parties disagreed as to the abstract of title, the interveners contending that "a good and marketable title" was shown as required by the contract, the petitioner contending to the contrary. As a consequence the purchase of the property was not consummated.

On July 11, 1918, the petitioner demanded of the bank a return of the money and, this being refused, on August 1, 1918, brought a suit at law against the bank and alleged in the petition that the abstract of title to the oil property was defective; that the bank had been duly notified of this on July 11 and a return of the money demanded from it, which it refused to make, but converted and appropriated the

money to its own use. There was prayer for judgment against the bank for one hundred thousand dollars, interest from July 11, and costs (Rec. p. 2 *et seq.*).

The bank answered on September 16, 1918. It set out that it held the money under the terms of the contract of purchase, but disclaimed any interest therein; said that claim was made to it by the interveners as well as by the petitioner; that it did not know who was entitled to it, and offered to pay it into court or to such person as the court might direct. It asked that the interveners be made parties to the suit and be required to set up their claims; that the court make proper order as to the disposition of the money; that upon compliance therewith it be discharged from all liability therefor, and for its costs (Rec., p. 6 *et seq.*)

On November 12, 1918, the court ordered, adjudged, and decreed that the interveners be made parties and that they set up what claims they had to the money. The interveners at once appeared and were given until December 2 to plead. "And said cause continued." No order was made as to the money and no order as to the bank (Rec., pp. 8-9).

On December 24, 1918, the interveners filed an answer to the plaintiff's petition and a cross-petition. The answer was a denial of the allegations of the petition and prayed that the plaintiff take nothing herein and that interveners recover as prayed in their cross-petition (Rec., pp. 9-10).

The cross-petition alleged that the abstract of title presented by them showed a good and marketable title, as required by the contract, and that they were ready to make full performance of the contract. They asserted the right to receive the money held by the bank and to judgment therefor and asked for an order directing the bank to pay the money

to them and for costs and general relief (Rec., pp. 10-12).

They also asked judgment against the petitioner for one million dollars, balance of the purchase price of the oil properties, but this was abandoned at the trial.

On April 12, 1919, the petitioner filed answer to this cross-petition. It asserted again the insufficiency of the abstract of title, notification thereof to the bank and the interveners, demand of the money from the bank, and conversion of the money by the bank to its own use. It prayed that the interveners take nothing and be adjudged and decreed to have no interest or claim in the said sum of one hundred thousand dollars, and as to itself that it recover as prayed in its petition and for such other and further relief as it was entitled to in the premises (Rec., pp. 13-16).

Upon the issues thus joined the case in its entirety came on for trial on November 13, 1919, all the parties appearing by counsel (Rec. p. 16 *et seq.*). As stated by counsel for the bank, who was also counsel for interveners, there was a single issue—*i. e.*, "whether or not the title furnished is a title that complies with the contract. * * * There is no charge on the part of anybody of bad faith or anything of that kind, but purely a question as to whether the title furnished was the title required by the contract" (Rec. p. 19).

Such a question "is one of law to be determined by the court from the contract" (Maupin on Marketable Titles to Real Estate, p. 749). The testimony adduced was the abstract originally presented and matters supplementary thereto. There was no question as to the verity of any item of testimony, but only, Was the title disclosed such as the contract called for?

A jury was waived in writing and the cause tried by the court. In the course of the trial it appeared from the statement of counsel that the money had now been paid into court, and the judge said, in passing, "The bank discharged," but no entry of any kind was then made. He submitted a written opinion on February 6, 1920, holding the title to be sufficient under the contract (Rec., p. 225 *et seq.*), and on April 17 entered a comprehensive judgment which determined the entire case as between all the parties. The bank was "discharged from all further liability in this cause" and given judgment against the interveners for costs. The money in court was ordered to be paid to the interveners, and they were awarded judgment against the petitioner for interest and for costs (Rec., pp. 237 and 238).

The petitioner in open court at the time gave notice of appeal and was allowed time "to prepare and serve a bill of exceptions; a transcript of the record and a statement of the evidence on appeal," which it did and otherwise perfected its appeal (Rec., pp. 238 and 224 and 225).

The proceeding, though quite informal, was an interpleader in equity. The same fund was demanded of the bank by two parties; the adverse claims were derived from a common source; the bank asserted no interest in the subject-matter, and it had incurred no independent liability to either party. This made a case of interpleader, a case in equity (Pomeroy's Equity Jurisprudence, vol. 4, sec. 1322).

Counsel in the course of the case in the District Court had some question whether the suit was at law or in equity, using sometimes the terminology of a suit in equity and sometimes that of a suit at law. A jury was waived in writing and a bill of exceptions was filed in the case which

was also designated and filed as "a full and complete transcript and statement of all the evidence introduced and offered and of all the proceedings appearing at the trial." There was apparently an endeavor in matters of form and procedure to meet the requirements both of a suit at law and a case in equity until it came to securing a review by the Court of Appeals, when an appeal was taken.

The case was heard in the Court of Appeals by Circuit Judges Hook and Carland and District Judge Lewis, and they handed down an opinion holding that the case was a suit at law, that a writ of error should have been had, but that pursuant to section 1649*a*, U. S. Comp. Stat. 1916, they would disregard the mistake and "take the action which would be appropriate if the proper appellate procedure had been followed" (Rec., p. 246).

Dealing with the case, then, as a suit at law and before them on a writ of error, they decided that, as there had been in the trial court no request to find the facts or declare the law, "there is nothing for this court to do except to affirm the judgment below." And this they did. Judge Hook dissented, but submitted no opinion (Rec., pp. 247-248). So the merits of the case were not considered at all and the case was disposed of upon a technical question of procedure.

A petition for rehearing was submitted in due time, but overruled, Judge Hook again dissenting (Rec., p. 277).

The Decision of the Court of Appeals is in Direct Conflict with Coler vs. Cleburne, 131 U. S., 162.

Assuming the case to be, as the Court of Appeals held, one at law, the decision of that court is in direct conflict

with the decision in Coler *vs.* Cleburne, 131 U. S., 162, which as to procedure is identical with the case at bar. A jury was waived in writing. There was no request for a finding of facts or for a declaration of law. And, as here, there was no conflict in the testimony. The question there was one of law upon undisputed facts, whether certain bonds were valid or invalid, as here the question was one of law upon undisputed facts, whether the title disclosed was "a good and marketable title," as called for by the contract. There, as here, there was a bill of exceptions which set forth what was proved, and there, as here, the court upon the pleadings and the proof found the question of law, which asserted itself upon the record, for the defendant. In the case cited the court said, *l. c.*, 163:

> "There is no special finding of facts, but there is a bill of exceptions, which after setting forth what was proved, states that the court on the pleadings and proof, found the law for the defendant, and rendered final judgment for it and against the plaintiff, for costs of suit. This is a sufficient special finding of facts to authorize us, under sec. 700 of the Revised Statutes, to determine whether the facts found are sufficient to support the judgment."

So, upon the same state of record and applying the same statutory provisions concerning procedure, this court decided that the litigant was entitled to a determination of his case upon the merits, and the Court of Appeals decided that he was not.

The Decision of the Court of Appeals is in Contravention and Disregard of the Procedure Established by the Equity Rules and by the Code of Judicial Procedure.

Since Coler *vs.* Cleburne was decided there have been material amendments to the equity rules and to the Code of Judicial Procedure expressly designed to prevent untoward results like that occurring in the present case and to secure in every case, if possible, an adjudication of the merits of the controversy between the parties. To accomplish this reform the American Bar Association has labored strenuously for years. In aid of that worthy purpose this court provided by equity rule 19 that

> "The court at every stage of the proceeding must disregard any error or defect in the proceedings which does not affect the substantial rights of the parties."

And by rule 23 that

> "If in a suit in equity a matter ordinarily determinable at law arises, such matter shall be determined in that suit according to the principles applicable, without sending the case or question to the law side of the court."

To further simplify matters it was provided by the act of Congress of March 3, 1915, *a* 90, Comp. Stat., U. S., 1916, sec. 1251*b*, p. 2023, that

> "In all actions at law, equitable defenses may be interposed by answer, plea or replication without the necessity of filing a bill on the equity side of the court. The defendant shall have the same rights in such case as if he had filed a bill embodying the defense or seek-

> ing the relief prayed for in such answer or plea. Equitable relief respecting the subject-matter of the suit may thus be obtained by answer or plea. In case affirmative relief is prayed in such answer or plea, the plaintiff shall file a replication. Review of the judgment or decree entered in such case shall be regulated by rule of court. Whether such review be sought by writ of error or by appeal *the appellate court shall have full power to render such judgment upon the records as law and justice shall require.*"

To make assurance doubly sure that no case should miss being heard and determined on its merits, Congress enacted an amendment to section 269 of the Code of Judicial Procedure, act of February 26, 1919, c. 48, Comp. Stat. U. S., 1916, Supp. 1919, Vol. 1, p. 273, which provides that

> "On the hearing of any appeal, certiorari, writ of error or motion for a new trial, in any case, civil or criminal, the court shall give judgment after an examination of the entire record before the Court, without regard to technical errors, defects or exceptions which do not affect the substantial rights of the parties."

The action of the Court of Appeals is, we submit, in contravention of the rules and statutes cited and is a virtual nullification of them. The Court of Appeals had before them a full record of the case as tried in the District Court; there was no question as to the verity of any of the testimony offered on either side, and there was involved under the pleadings and the proof the single question of law, *i. e.*, was the title disclosed a good and marketable title? The District Court decided that issue for the interventers and against the petitioner and the Court of Appeals decided that the peti-

tioner could have no review of that action because it had not in explicit formal terms asked the District Court to decide that issue in its favor, when the very fact of the trial and every step and stage of it was such a request.

If the rules and amendments to the code of procedure are to be so construed and applied, it were better they had not been adopted, for reliance upon them will in every case meet with disappointment.

This court has had occasion twice to consider the amendment of 1919 and in each case has given effect and force to the law, holding in Camp *vs.* Gress, 250 U. S., 308, that thereby

> "The duty is especially enjoined of giving judgment in appellate proceedings without regard to technical errors, defects or exceptions which do not affect the substantial rights of the parties."

In Horning *vs.* District of Columbia, a criminal case, decided November 22, 1920, Advance Opinions, p. 64, the trial court had practically, and almost in express terms, directed a verdict of guilty, and yet this court affirmed the case, saying:

> "Perhaps there was a regrettable peremptoriness of tone, but the jury were allowed the technical right, if it can be called so, to decide against the law and the facts, and that is all there was left for them after the defendant and his witnesses took the stand. If the defendant suffered any wrong, it was purely formal, since, as we have said, on the facts admitted there was no doubt of his guilt."

And the amendment of 1919 is cited in support of this ruling.

The decision of the Court of Appeals herein is in direct conflict with these cases. They vitalize the amendment, that emasculates them. And the decision of the Court of Appeals is far-reaching in its consequences. If it stands, all that has been done during the last decade for the reform and simplification of judicial procedure will be nullified, for we have here a case decided on a mere matter of form, a technicality as to which counsel were in doubt and the court itself divided in opinion.

The Decision of the Court of Appeals is in Contravention of the Established Mode of Equity Procedure.

We have assumed so far, but do not concede, that the suit was at law. The answer of the bank made in substance a case of interpleader. As to this the majority of the Court of Appeals say (Rec., p. 248):

> "Assuming that the answer of the bank has the same standing as a bill of interpleader under section 274*b*, Judicial Code, 38 Stat., 956, we can assume further that the answer was an equitable defense or proceeding, but that proceeding ended when the court ordered appellees other than the bank to be made parties. The bank paid the money into court and went its way released from all liability. The proceeding at law between the other parties went on. It is well settled that when a judgment of interpleader is rendered it puts an end to that proceeding. The parties who are ordered to interplead may commence an action at law or in equity as the facts warrant. In this case the action at law had been commenced and proceeded on to judgment. That the order directing appellees other than the bank to be made parties to the suit commenced by appellant was an

end of that proceeding is supported by Daniels, Chancery P. & P., ch. 2, p. 1568, etc."

Here are two errors, one of fact as to what was done in the trial court and the other of law as to what was proper procedure. We have set out in order the proceedings in this case, and this shows that there never was a separate, distinctive decree of interpleader. The preliminary order, the only order made in the case other than the final judgment, simply brought the interveners into the case, directed them to plead, and continued the cause. It adjudicated no rights. The bank did not go its way released from all liability, but remained a party to the end, getting its costs and its release from liability by the final judgment in the case, and only by that.

And, as a matter of form, it was not necessary to deal with the case between the bank, on one side, and the petitioner and interveners, on the other, as constituting one suit, a suit in equity, and the contention between the petitioner and interveners as a separate suit and at law. The proceeding by the bank made the suit in its entirety one in equity, and even though a matter should arise therein ordinarily determinable at law, under equity rule 23 "such matter shall be determined in that suit according to the principles applicable, without sending the case or question to the law side of the court." So the contention set up by the interveners by their pleading did not send either the case or the question they presented to the law side of the court.

Nor under the old chancery practice was it essential to segregate the controversy between the adverse claimants from the case made by the interpleader as to himself. It was proper

to dispose of the interpleader by a separate decree and leave the adverse claimants to settle their controversies by a separate suit or proceeding in law or in equity as might be appropriate, and it was equally proper to dispose of the entire case, adjudicating in one decree the matter of interpleader and the controversy between the adverse claimants. This was, in the discretion of the chancellor, determinable by considerations of convenience. And Daniels so states in the very section cited by the Court of Appeals.

In Condict *vs.* King, 13 N. J. Eq., 375 *l. c.*, 383, the court said:

> "The court disposes of questions arising upon bills of interpleader in various modes, according to the nature of the question and the manner in which it is brought before the court. If at the hearing the question between the defendants is ripe for decision the court decides it and pronounces a final decree. * * * If at the hearing, the case is not ripe for decision, the court directs an action or an issue, or a reference to a master, as may be best suited to the nature of the case."

And so says Chancellor Cooper in State Ins. Co. *vs.* Gennett, 2 Tenn. Ch., 100. Many other authorities might be cited, but there is no conflict in the cases.

By reason of a dubious technicality the petitioner was denied consideration of its case on the merits, and this is equivalent to a denial of hearing altogether. It means a failure of justice, which the changes in the rules and the code of procedure were designed to prevent. The important consideration here is whether cases shall be determined upon questions of practice like those presented by this record or upon their merits; whether the new rules and new code shall

be given the effect, which was their object, to simplify the procedure and improve the administration of our law, or whether the words of promise they speak shall be barren of all performance.

Outline of Petitioner's Case on its Merits.

A full presentation of the petitioner's case on the merits is not appropriate. The purpose of this petition is to secure a hearing which the petitioner has not had. The claim it presents is confessedly made in good faith. The opinion of the District Court, adverse though it is, shows that it has substance. An essential part of the land involved was in 1893 the property of Crippen, Lawrence and Company, a partnership resident and doing business in Colorado. The legal title was held in trust for them by one J. E. Putnam. They made a general assignment for the benefit of creditors to S. H. Standart. Putnam, at their request, conveyed the land of which he held the legal title to Standart as assignee for the purposes of the assignment. The only administration of the assignment was by a Colorado court. The indebtedness of the firm amounted to several hundred thousand dollars, half a million in the form of debenture bonds. The creditors were numerous and their names unknown to the assignors. The sale of the land in question by the assignee to one Jenkins, through whom the interveners derive title, was authorized by the Colorado court, but the statutes of Kansas provide that as to property within that State a general assignment, foreign or domestic, for the benefit of creditors must be administered by the proper court of Kansas. The statute, section 464, General Statutes of Kansas, 1915, reads:

> "The District Court or judge thereof in vacation, shall make an order for the sale of all the real or personal estate conveyed by any deed of assignment, either for cash in hand or upon such reasonable credits as shall appear to such court or judge to be most advantageous to all the parties in interest, and shall, by order, direct the nature of the security to be taken at sales made by assignees under the provisions of this chapter."

No order for the sale of the land was ever obtained from a Kansas court, and under the Kansas decisions the conveyance from Standart, assignee, to Jenkins was void. So there might be outstanding claims by creditors of Crippen, Lawrence and Company, or reversionary claims by members of that firm or their heirs. To meet this contingency the interveners exhibited three *ex parte* affidavits to show title by adverse possession, but the Supreme Court of Kansas holds (Beeler *vs.* Sims, 93 Kans., 213) that—

> "A contract to furnish an abstract showing a marketable title is not complied with by presenting one that purports to show by affidavit only that the fee title, which appears by the abstract to be outstanding, has been divested by limitation or adverse possession" (*l. c.*, 217).

That court also holds that what constitutes a marketable title is a question of local law (Canady *vs* Muller, 102 Kans., 577).

This, we assume, is not the place for a full presentation or discussion of the merits of the petitioner's claim. It has a substantial claim, made in good faith, upon substantial

grounds. This claim has been denied consideration for purely technical reasons that find no warrant either in the equity rules promulgated by this court nor in the code of judicial procedure enacted by Congress.

The petitioner respectfully submits that for the reasons hereinbefore set forth the writ of certiorari should issue as prayed for.

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HARRY E. KARR,
EDWARD M. HAMMOND,
CHARLES G. YANKEY,
Of Counsel for the Petitioner.

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IN THE

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OCTOBER TERM, 1922.

No. 98

LIBERTY OIL COMPANY, PETITIONER,

vs.

THE CONDON NATIONAL BANK (A CORPORATION) RESPONDENT, AND ATLAS PETROLEUM COMPANY (A CORPORATION), C. M. BALL, ISADORE LITMAN, P. G. KEITH AND J. H. KEITH, INTERVENERS, RESPONDENTS.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

BRIEF AND ARGUMENT FOR THE PETITIONER, THE LIBERTY OIL COMPANY.

STATEMENT.

This suit was instituted as a suit at law by the petitioner as plaintiff against the Condon National Bank as defendant in the Third Division of the District Court of the United States for the District of Kansas.

It was based upon a contract for the purchase of some leases of oil lands in Kansas by the petitioner from the parties named herein as interveners. The price agreed to be paid was one million and one hun-

dred and fifty thousand dollars, of which one hundred thousand dollars was deposited in the Bank to be held in escrow upon condition that the interveners furnished the petitioner with "An abstract of the title of said property showing good and marketable title to said property vested in said second parties (interveners) free and clear of all liens, incumbrances, claims and indebtedness, etc." The petitioner was to have seven days to examine the title and if the examination showed that the title was not good and marketable, the interveners were to have a reasonable time not exceeding thirty days to perfect the same. If the title was good and the contract carried out, the petitioner was to pay the balance of the purchase price to the Bank. If the title shown was a good and marketable one and the petitioner did not pay the balance of the purchase price the one hundred thousand dollars ($100,000) was to be delivered by the Bank to the interveners "as liquidated damages" and the contract was to "become null and void." If the title was found to be not good and marketable as to all of the property and it was not perfected within thirty days it was stipulated that "the one hundred thousand dollars ($100,000) shall be returned to the first party (petitioner) and this contract shall become void, etc." (Rec., 18-22.)

The Petition

alleged the making of the contract, the deposit of the money thereunder and that upon examination the title was found to be not a good and marketable one, the specific objection being that on September 18th, 1893, one J. E. Putnam held the record title to a portion of

the property in Butler County, Kansas, and on September 21st, 1893, he made a deed of this property to S. H. Standart, assignee, reciting that he was not the owner of this property and only held the same for Crippen, Lawrence and Company, a partnership, that Crippen, Lawrence & Company on the 18th day of September, 1893, made a deed of general assignment for the benefit of their creditors to Standart as assignee, and that the deed which he, Putnam, was making was for the purpose of including the property conveyed by him in the assets of Crippen, Lawrence & Company under the general assignment as an asset of the assigned estate. Crippen, Lawrence & Company had their principal place of business in Arrapahoe County, Colorado, and their general deed of assignment was made and filed in Arrapahoe County, Colorado and jurisdiction over it was assumed by the District Court of that county and under the direction of that Court, Standart, as assignee, filed his bond for the faithful performance of his duties. On the 31st day of August, 1894, Standart, as assignee, made a conveyance of this property to one Benjamin Jenkins, that this conveyance was ineffective and void because there was no showing that it was made by virtue of any order of the District Court of Butler County, Kansas, or of any other Court of competent jurisdiction; that for this reason the title of C. R. Nuttle who had executed the oil and gas leases on the property was not a good and marketable title, in that it was derived from and dependent upon, the conveyance from Standart, assignee to said Jenkins. This defect it alleged was not made good.

The petition alleged notification to the Bank of this defect and failure to make it good and a demand upon the Bank for the money deposited with it, a refusal by the Bank to comply with this demand and a conversion by the Bank of the money to its own use, to the petitioner's damage in the sum of one hundred thousand dollars, for which sum with interest and costs the petitioner prayed judgment against the Bank. (Rec., 3-6.)

Answer of the Bank.

The Bank filed an answer in which it admitted having the fund and alleged that it held it under the contract between the plaintiff and the owners (interveners), and that it had no interest therein, but that it was claimed by both sides and which of them was entitled thereto it did not know, and so offered to pay the fund into court or to such person as the Court might direct. It prayed that the owners be made parties and be required to set up their claim to the fund, and

> "that the Court herein make such order as seems to it meet and proper with reference to the disposition of said money, and that this defendant, upon compliance with said order, be discharged from all liability in connection therewith, for its costs, and for general relief." (Rec., 6-8.)

Order of the Court.

The parties, plaintiff and defendant, and the Court, treated this answer as making the case one in equity, for an order was entered making the interveners (owners) parties to the cause, as follows, viz: (Rec., 8.)

> "It is therefore Ordered, Adjudged and *Decreed*, that the Atlas Petroleum Company, C. M.

Ball, Isadore Litman and P. G. Keith and J. H. Keith be made parties to said cause, and that they and each of them be required to set up what claim or interest, if any, they have in said controversy, and in or to the money held by the defendant in this action, within twenty days from the date hereof. Thereupon said defendants, Atlas Petroleum Company, C. M. Ball, Isadore Litman and P. G. Keith and J. H. Keith, and each of them, by and through their attorney, John J. Jones, entered their voluntary appearance in said cause, and waived the issuance and service of process and asked, and for good cause shown, were given to and including the second day of December, 1918, to plead herein *and said cause continued.* (Italics ours.)

JOHN C. POLLOCK,
Judge."

Answer and Cross-petition of Interveners.

On December 24th, 1918, the owners, as interveners filed their answer and cross-petition (Rec., 9-11) to the original petition.

By their answer they denied the right alleged by the plaintiff (the Petitioner), and alleged that the abstract showed a good and marketable title; that the objections made to it by petitioner were not valid; that they had fully performed the contract on their part, and they prayed that "the plaintiff take nothing herein and that these interveners recover of said plaintiff as prayed in their cross-petition."

In their cross-petition, the interveners set up the contract of sale and purchase, the deposit of the money with the Bank; that they had furnished a proper ab-

stract and had in every respect fully performed the contract on their part.

The interveners further alleged that they had at all times offered full performance of the contract "and are now ready, able and willing and hereby offer to make good and deliver said title to the plaintiff herein, and that they are now entitled to receive the $100,000.00 deposited by the plaintiff with the defendant (the Bank) herein, and for judgment therefor, and for the further sum of $1,000,000."

The prayer was "for judgment against the plaintiff herein for the sum of $1,100,000 and for an order directing the defendant herein topay the $100,000 now in its possession, to these interveners, for costs and for general relief."

Petitioner's Answer to Cross-petition.

To this cross-petition the plaintiff made answer, denying the right of the interveners and asserting its own, alleging also that the Bank had "converted and appropriated the said sum to its own use," and prayed to "recover as prayed for in its petition" (Rec., 15) which was for "judgment against the defendant (the Bank) in the sum of one hundred thousand dollars with interest, etc."

As to the interveners it prayed simply that they "take nothing herein" * * * and that it be adjudged and decreed that the interveners have no interest or claim in the said sum of one hundred thousand dollars." (Rec., 12-15.)

Trial of the Case.

Upon the issues thus made the suit as an entirety came on for hearing before the Court, "the jury hav-

ing been duly waived in writing by all parties." (Rec., 218.)

"The defendant, the Condon National Bank appeared by Mr. John J. Jones, its solicitor." (Rec., 15.)

The parties agreed as to the issue involved. As counsel for the Bank said, "there is no charge on the part of anybody of bad faith or anything of that kind; but purely a question as to whether the title furnished was the title required by the contract." (Rec., 17.)

In the course of the trial this occurred (Rec., 17):

> "By the Court: The Bank got the money in court.
>
> By Mr. Yankey: The money is in the registry of the Court.
>
> By the Court: The Bank discharged.
>
> By Mr. Yankey: At the time the application was made a question of liability for interest was suspended until this hearing, until the matter could be finally determined." (Rec., 17.)

No order was entered at this time as to the Bank and the trial proceeded with all the parties in, until final judgment was entered.

The plaintiff showed that it had made timely objections to the title and the interveners showed what they had done to obviate those objections.

Opinion of the District Court.

The Court then took the case under advisement and on February 7th, 1920, rendered its opinion (Rec., 208-218) holding that the title exhibited was a good and marketable one and determining every question in the case as between all the parties thereto.

Judgment of the Court.

Pursuant to its opinion the Court on April 17th, 1920, entered judgment as follows, viz: (Rec., 218-220)

"Now, on this 17th day of April, 1920, this cause came on for decision by the Court, the jury having been duly waived in writing by all parties.

The Court having had said cause under advisement as per order of November 13th, 1919, and being fully advised in the premises and after full consideration thereof *the Court does find for the defendant, The Condon National Bank* and for the interveners, Atlas Petroleum Company, C. M. Ball, Isadore Litman, P. G. Keith and J. H. Keith, to which the plaintiff at the time excepted and excepts.

The Court further finds that the interveners were entitled to the delivery to them of the one hundred thousand ($100 00.00) dollars since the 30th day of June, 1918, and that the possession of the same was withheld through the direction of the plaintiff and that the interveners are entitled to recover interest at the rate of six per cent per annum from the 30th day of June, 1918, on said sum from the plaintiff, to which the plaintiff at the time duly excepted and excepts.

It is now, therefore, considered, ordered and adjudged that the plaintiff take nothing as against the defendant, The Condon National Bank or as against the interveners, Atlas Petroleum Company, C. M. Ball, Isadore Litman, P. G. Keith and J. H. Keith or either or any of them, and *judgment is hereby rendered against the plaintiff for the costs herein incurred, made and expended by the defendant, The Condon National Bank,* and the interveners, Atlas Petroleum Company, C. M. Ball, Isadore Litman, P. G. Keith and J. H. Keith and each and all of them, taxed at----------dollars,

to which the plaintiff at the time excepted and excepts.

That the interveners, Atlas Petroleum Company, C. M. Ball, Isadore Litman, P. G. Keith and J. H. Keith do have and recover from the plaintiff, Liberty Oil Company, the sum of ten thousand, seven hundred fifty ($10,750.00) dollars, which is the interest on said sum of one hundred thousand ($100,000.00) dollars at six per cent from the 30th day of June, 1918, to which the plaintiff at the time duly excepted and excepts.

That the defendant, The Condon National Bank, having heretofore paid into the hands of the Court the funds in its possession it is discharged from all further liability in this cause. That the interveners, Atlas Petroleum Company, C. M. Ball, Isadore Litman, P. G. Keith and J. H. Keith have judgment for one hundred thousand dollars ($100,000.00) now in the registry of the court, and the registrar of the court be, and he is hereby, ordered and directed forthwith to pay to said interveners, Atlas Petroleum Company, C. M. Ball, Isadore Litman, P. G. Keith and J. H. Keith, the funds now in the registry of the court, to-wit, one hundred thousand dollars ($100,000.00) to each and every part of which plaintiff at the time duly excepted and excepts. All of which exceptions were by the Court allowed. The plaintiff in open court and at the time of the rendering of said judgment gave notice of its appeal to the United States Circuit Court of Appeals for the Eighth Circuit.

It is further ordered on application of the plaintiff that the execution of said judgment be stayed for the period of thirty days and that the plaintiff shall have such time within which to execute a supersedeas bond in the sum of fifteen thousand dollars ($15,000.00), which bond, ap-

proved by the Clerk of the Court, shall stay said execution pending said appeal.

It is further ordered upon application of the plaintiff that the plaintiff have ninety days within which to prepare and serve a bill of exceptions, a transcript of the record and a statement of the evidence on appeal, *and that the defendant and interveners* have fifteen days after service of the same upon them to suggest amendments. Said bill of exceptions to be settled and approved by the Court upon five days' notice of the settling of the same by either party to the other. (Italics ours.)

JOHN C. POLLOCK,
Judge."

The Appeal.

The plaintiff (petitioner) in open court at the time "of rendering said judgment gave notice of its appeal to the United States Circuit Court of Appeals for the Eighth Circuit" (Rec., 219), and upon its application was allowed ninety days within which "to prepare and serve" a bill of exceptions, a transcript of the record and a statement of the evidence on appeal," and the defendant (the Bank) and the interveners were allowed fifteen days after service of the same upon them to suggest amendments. Said bill of exceptions to be settled and approved by the Court upon five days' notice of the settling of the same by either party to the other. (Rec., 220.)

A petition for appeal was also submitted (Rec., 2) accompanied by assignments of error (Rec., 220, *et seq.*) and the appeal allowed (Rec., 2) and "the defendant (Bank) and the interveners" waived citation and notice of appeal and announced that they "do hereby

enter their voluntary appearance in the appeal to the Circuit Court of Appeals of the United States for the Eighth Circuit." (Rec., 1.)

The Bank, by its own volition and by common consent of all parties and of the Court, remained as a party to the cause until its close and by its own volition and by concurrence of all parties and of the Court was a party on appeal.

The Record on the Appeal.

May 13th, 1920, the defendant (Bank) and all the interveners approved the transcript presented by plaintiff "of the testimony and proceedings before the Court and bill of exceptions and agreed to the filing of the same and the Court, on May 17th, 1920, entered the following order thereon (Rec., 207):

> "Certificate to Bill of Exceptions.
>
> Now, on this 17th day of May, 1920, and within the time heretofore fixed by the order of this Court, the plaintiff presents the foregoing as its true and correct bill of exceptions in this case and prays the Court to allow, sign and duly certify the same and order that the said bill of exceptions be made a part of the record in this case.
>
> And, it further appearing to the Court that J. J. Jones, Esq., who represented *the defendant and the interveners* as attorney of record in the trial of the above entitled case, having examined the above and foregoing testimony and bill of exceptions and found the same to be correct and that the said J. J. Jones, Esq., having filed herewith his consent that the Trial Judge herein may settle, sign and seal the foregoing bill of exceptions and that the same, together with the within testimony may be filed

in the said cause as a part of the records in said cause:

And, it further appearing that the said J. J. Jones, Esq., having waived any and all notice of the time and place of the settling, signing and sealing of the said bill of exceptions and testimony therein and consents that the same may be settled, signed and sealed at any time and place when presented to the Trial Judge.

Now, therefore, I, the undersigned Judge of said court, do hereby certify that the above and foregoing bill of exceptions is a full, true and correct transcript of all of the proceedings had on the trial of the above entitled action and contains all of the evidence, objections and rulings of the Court thereon and exceptions saved at the trial of the said action, and that the said bill of exceptions is true and correct and is therefore now allowed and signed by this Court.

It is further ordered that the same be filed by the Clerk of this court and be made a part of the record of this case.

It is further ordered that *the foregoing transcript of the evidence introduced at the trial and of all of the proceedings occurring at the trial be and the same are hereby approved as a full and complete transcript and statement of all the evidence introduced and offered, and of all the proceedings appearing at the trial, and the same is ordered filed in this cause as such transcript and statement.* (Italics ours.)

JOHN C. POLLOCK,
Judge of the United States District Court, District of Kansas, Third Division."

The Case in the Court of Appeals.

The appeal was perfected in all respects and the cause came on to be heard in the Circuit Court of Ap-

peals and was heard and submitted for decision on January 5th, 1921. (Rec., 226.)

The Court, consisting of Judges Carland, Lewis and Hook, on March 9th handed down an opinion, Hook, Circuit Judge, dissenting, affirming the judgment of the court below. (Rec., 226, *et seq.*)

The Court held that the suit was one at law and should have been brought before it by writ of error instead of by appeal, but pursuant to section 1649a U. S. Comp. Stat. 39 Stat. 727, they disregarded this alleged mistake and dealt with the case as before them on writ of error, and so dealing with it, they held:

> "The only error insisted upon in this case is the sufficiency of the evidence to support the judgment, it being claimed that the evidence showed that appellees, other than the Bank, did not furnish an abstract of title to the real estate upon which the leases sold were given that was marketable, there being an alleged defect in what is known as the Crippen, Lawrence & Co. tract. The question as to whether the evidence was sufficient to justify a finding in favor of appellees other than the Bank was in nowise raised in the trial court either by a request to find the facts or to declare the law. The evidence is in the record in the form of a bill of exceptions, a document unknown to a court of equity. The bill of exceptions does not disclose any ruling upon any request to find the facts or declare the law by the trial court.
>
> On writ of error which ought to have been the process by which the case was removed to this court, our power to review is confined to rulings of the trial court in matter of law. No such rulings having been assigned and argued

there is nothing for this Court to do except to affirm the judgment below.'"

A petition for rehearing was filed in due time, which was overruled, Hook, Circuit Judge, again dissenting.

The Writ of Certiorari.

Application was then made to this Court for a writ of certiorari which was allowed.

Assignments of Error.

We assign as errors committed by the Circuit Court of Appeals:

First. Its holding that the suit was at law and not in equity and its refusal therefore, to consider it as upon appeal and upon the merits.

Second. Its holding that the suit was one at law and not subject to review upon its merits because there had been in the trial no specific request for a finding of facts and declaration of law.

Third. Its refusal to examine the entire record before the Court without regard to the alleged technical errors or defects which did not affect the substantial rights of the parties.

Fourth. In not deciding that the abstract of title exhibited did not comply with the contract between the parties.

Fifth. In not reversing the judgment of the District Court and directing judgment for the petitioner.

In support of these assignments of error, we submit the following points accompanied by the authorities and argument sustaining them.

POINTS AND AUTHORITIES.

THE SUIT WAS ONE IN EQUITY AND THE PROCEDURE WAS IN SUBSTANTIAL ACCORD WITH THE RULES OF CHANCERY PRACTICE.

Pomeroy's Eq. Jur. Vol. 4, Sec. 1322,
Daniel's Ch. P. & P. Vol. 2, 6th Am. Ed., p. 1568,
Equity Rules 19 and 23,
Chap. 90 U. S. Stat. at large, p. 956, adding section 274b to the Judicial Code,
State Ins. Co. *vs.* Gennett, 2 Tenn. Ch. 100,
Rowe *vs.* Admr's. of Hoagland, 7 N. J. Eq. 131,
Condict *vs.* King, 13 N. J. Eq. 375,
City Bank *vs.* Bangs, 2 Paige Ch. 570,
Gibson *vs.* Goldthwaite, 7 Ala. 281.

II.

CONSIDERED AS A SUIT AT LAW THE CASE WAS SUBJECT TO REVIEW UPON ITS MERITS EVEN THOUGH THERE HAD NOT BEEN IN THE TRIAL COURT A SPECIFIC REQUEST FOR A FINDING OF FACTS AND DECLARATION OF LAW.

Maupin on Marketable Titles to Real Estate, p. 749,
Coler *vs.* Cleburne, 131 U. S. 162,
Chap. 48 U. S. Stat. at large 1919, p. 1181, amending Sec. 269 of the Judicial Code.

III.

WHETHER THE SUIT WAS IN EQUITY OR AT LAW THE COURT OF APPEALS SHOULD HAVE GIVEN JUDGMENT ONLY AFTER EXAMINATION OF THE ENTIRE RECORD BEFORE THE COURT, WITHOUT REGARD TO THE ALLEGED TECHNICAL ERRORS AND DEFECTS NONE OF WHICH AFFECTED THE SUBSTANTIAL RIGHTS OF THE PARTIES.

Chap. 48 U. S. Stat. at large 1919, p. 1181 amending Sec. 269 of the Judicial Code,
Camp *vs.* Gress, 250 U. S. 308,
Horning *vs.* Dist. of Columbia, 154 U. S. 135.

IV.

THE ABSTRACT OF TITLE SHOWN BY THE INTERVENERS WITH THE SUPPLEMENTS THERETO MADE TO OBVIATE THE OBJECTIONS MADE BY THE PETITIONER DID NOT DISCLOSE A GOOD AND MARKETABLE TITLE.

Canady *vs.* Miller, 102 Kans. 577,
Kansas General Statutes, 1915, Sec. 464,
Thompkins *vs.* Adams, 41 Kans. 38,
Watson *vs.* Holden, 58 Kans. 657,
McNutt *vs.* Nellans, 82 Kans. 424,
Boyer *vs.* Sims, 61 Kans. 160,
Wesley *vs.* Eells, 177 U. S. 370,
Kansas General Statutes, 1915, Secs. 6905-6908 and 6910,
Beeler *vs.* Sims, 91 Kans. 757,
Beeler *vs.* Sims, 93 Kans. 213.

ARGUMENT.

I.

This suit as instituted by the petitioner was one at law. The petition alleged the receipt of the one hundred thousand dollars by the Bank, the occurrence of the condition which entitled it to a return of the money, demand of and refusal by the Bank and conversion of the money by the Bank to its own use, and upon these allegations prayed judgment against the Bank for one hundred thousand dollars, interest and costs of suit. (Rec., 3-6.)

The Bank answered admitting that it had received the money and alleged that it held it under the contract between the petitioner and the owners of the oil property; that it had no interest therein; that it was claimed by both parties to the contract; and that it did not know which of them was entitled thereto. It offered to pay the money into court or to such person as the Court might direct. It prayed that the owners be made parties to the suit and be required to set up their claim to the fund; that the Court make proper order with reference to the disposition of the money; that upon compliance with the order it be discharged from all liability therefor and for costs. (Rec., 6-8.)

This, however informal, was in effect a bill of interpleader. It showed the Bank as a mere stakeholder, seeking to protect itself against the hazard of double payment, and the expense and trouble of two law suits when it was indifferent to the controversy involved. Here was the same thing demanded of the Bank by two claimants, the adverse claims were derived from a common source; the Bank claimed no interest in the subject matter, and so far as then appeared the Bank had incurred no independent liability to either claimant. Here were all the elements of an interpleader in equity. (Pomeroy's Eq. Jur. 3d ed. Vol. 4, Sec. 1322.)

The relief prayed was equitable relief, to which the Bank was entitled upon the facts alleged.

By the order of the Court, entered at this time, it was decreed that the owners be made parties to the cause and be required to set up what claim or interest if any they had in the controversy or to the money held

by the Bank; they at once entered their appearance which was noted in the order, and were given time to plead *and the cause was continued.* (Rec., 8.)

The interveners did not at this time file any pleading, but subsequently filed answer and cross-petition as set forth in our statement of the case.

Until the interveners filed their pleadings there could be no order made disposing of the case as to any of the parties, and no order was made until final judgment was entered, by which the entire case was determined as between all the parties.

The Court of Appeals, however, says that assuming that the answer was an equitable defense or proceeding, "that proceeding ended when the Court ordered appellees other than the Bank to be made parties. The Bank paid the money into court and went its way released from all liability. The proceeding at law between the other parties went on." This is not borne out by the record. The order of the Court simply made the owners parties and ordered them to set up their claims, and they then and there voluntarily appearing were ordered to plead within a stated time *"and said cause continued."* The Bank, without an order of court, paid the money into the court's registry, but it did not go its way released from all liability, nor could it in the then state of the case have done so, for it had not yet appeared what claim or interest in the controversy or the money would be asserted by the interveners or any of them. As a matter of fact the Bank continued in the case to the end. The Court of Appeals was mistaken as to the record.

Further as to the practice in interpleader cases, the Court of Appeals said:

> "It is well settled that when a judgment of interpleader is rendered it puts an end to that proceeding. The parties who are ordered to interplead may commence an action at law or in equity as the facts warrant. In this case the action at law had been commenced and proceeded on to judgment. That the order directing appellees other than the Bank to be made parties to the suit commenced by appellant was an end of that proceeding is supported by Daniel's Chancery P. & P. Vol. 2, p. 1568," and other authorities cited. (Rec., 229.)

Here is repeated the mistake as to what had been done in the case. There was no distinctive judgment of interpleader rendered, by which of course is meant a judgment bringing in the other parties and discharging the Bank. Nor is such a judgment the only judgment the Court may render in such a case. Daniel, where cited by the Court, continues:

> "The only question which is strictly before the Court at the hearing is, whether the defendants should interplead. It is not necessary for them to enter into evidence as against each other.
>
> Courts of equity dispose of questions arising upon bills of interpleader in various modes, according to the nature of the question, and the manner in which it is brought before the Court. An interpleading bill is considered as putting the defendants to contest their respective claims, just as a bill does which is brought by an executor or trustee to obtain the direction of the Court, upon the adverse claims of different defendants. *If at the hearing, the question be-*

tween the defendants is ripe for decision, the Court will make a decree."

When the case came again before the Court it came for hearing as an entirety and was ripe for decision as between the claimants as well as for decision as to the Bank.

It was competent for the Court then to enter a distinctive decree of interpleader, disposing of the case only as to the Bank, and leaving the controversy between the claimants to be determined separately as a suit at law or in equity, as might be appropriate to the nature of the case.

But the Court did not do this. By consent and concurrence of all the parties it tried the entire case as between all the parties and made one final decree in the case, as it was convenient to do, since there was but one issue in the case and that one of law. And this the Court might properly do, in the regular course of chancery practice.

Dealing with a case of interpleader in State Ins. Co. *vs.* Gennett, 2 Tenn. Ch. 100, Chancellor Cooper, l. c. 101, said:

> "The defendants, in order to a speedy decision of the matters in controversy between them, have agreed to submit the bill, answers, exhibits, proof and previous proceedings, at once to me for final determination. This they may do, the agreement, in effect conceding that the bill has been properly filed, and that the complainant is entitled to the usual decree of interpleader. * * * That decree is that the bill is properly filed, that the complainant is dismissed with costs, and that the defendants interplead. * * * This settles the case, so far as the

complainant is concerned, and is usually in England, accomplished by motion. * * * *If, at the hearing, the case between the defendants is ripe for a decision, the Court will decide it, and make a final decree at once.* * * * If it is not, the Court merely decides that the bill is properly filed, dismisses the plaintiff with his costs up to that time, and directs an action, or an issue, or a reference to a master, to ascertain contested facts, as may be best suited to the nature of the case. * * * Or, the Court may leave it to the defendants to prepare the case between them as they may be advised, which would be the effect of a general order to interplead."

We have quoted the paragraph of the opinion in full, omitting only the cases cited in the course of it.

There was nothing determined by the decretal order in this case quoted above, except that the owners be made parties and set up what claim, if any, they had to the fund. The Bank was not dismissed from the suit. The interveners might show when they appeared that there was no warrant for interpleading them. They might disclaim any interest, or set up an independent claim to the fund. There was in any event, as yet, no adjudication by the Court either as between the Bank and the claimants nor as between the claimants themselves. It was competent for the Court when it came to make final disposition of the cause as to one of the parties, to make such disposition of it as to all of them, in other words to determine the entire case in one and the same decree.

In Rowe *vs.* Admrs. of Hoagland, 7 N. J. Eq. 131, the procedure was substantially as here, that is the en-

tire controversy was heard and adjudicated at one time. The Chancellor, l. c. 139, said:

> "On a bill of interpleader there should, *regularly*, be a decree that the defendants interplead, and the case then becomes a case between the defendants, as between a complainant and defendant. *But as the proofs have been taken on both sides as between the defendants, and the cause is brought to hearing and is ready for a decision, both as between the defendants and as between them and the complainants, it may now be heard and a final decree made.*"

This case was cited with approval in Executors of Condict *vs.* King, 13 N. J. Eq. 373, l. c. 383, in which the Court said:

> "As to the mode of proceedings, or the form of the decree, there can be no difficulty. *The Court disposes of the questions arising upon bills of interpleader in various modes, according to the nature of the question and the manner in which it is brought before the Court.* If, at the hearing, the question between the defendants is ripe for decision, the Court decides it and pronounces a final decree. This course was adopted in the greatly contested case of Hendrickson *vs.* Decow, Saxton 593, and in Rowe *vs.* Admrs. of Hoagland, 3 Halst. Ch. R. 139.
>
> If at the hearing, the case is not ripe for decision, the Court directs an action or an issue or a reference to a master, as may be best suited to the nature of the case. Angell *vs.* Hadden, 16 Vesey 203; Seaton's Decrees 340; City Bank *vs.* Banks, 2 Paige 570; 3 Daniell's Ch. Pr. 1765."

This practice obtained in the English Courts of Chancery and was followed by the Chancery Courts of New York.

In City Bank *vs.* Bangs, 2 Paige Ch. Rep. 570, l. c. 572, the Chancellor said:

> "It also appears from the English reports that the testimony is sometimes taken, as to the rights of the defendants between themselves, previous to a decree to interplead. (Beymer *vs.* Buchanan, 1 Cox's Cas. 425. Duke of Bolton *vs.* Williams, 4 Bro. C. C. 297). In those cases and also where the right of one defendant is admitted by the answer of the other, or the bill is taken as confessed as to one, the Court settles the rights of the parties at once, and makes a final decree as to those rights, and as to the disposition of the fund in controversy. (Hodges *vs.* Smith, 1. Cos's Cas. 357.)

In Gibson *vs.* Goldthwaite, 7 Ala. 281, the Court, l. c. 392, said:

> "In respect to the form of the decree, the defendants had answered and taken testimony, the cause was ripe for a hearing, and *it was competent for the Chancellor to have adjusted the rights of the parties without directing an action, issue, or reference to the master. This has already been shown to be the correct practice where a case of interpleader is brought to a hearing under such circumstances.*"

That the issue as between the claimants might have been settled in a suit at law does not alter the character of the interpleader proceeding. To try the case as an entirety and to dispose of it in one decree is not only in harmony with the ancient chancery practice as the authorities cited show, but is in strict conformity with Equity Rule 23 which provides that:

> "If in a suit in equity a matter ordinarily determinable at law arises, such matter shall be

> determined in that suit according to the principles applicable, without sending the case or question to the law side of the court."

Take this rule in connection with Section 274b, Judicial Code, 38 Stat. 956, and we have express sanction for what was done. This section provides expressly that an equitable controversy may be injected into a suit at law, by answer and without the necessity of filing a bill on the equity side, and the party doing this is to have the same rights as if he had filed a bill. And in such a case if review is sought, "whether such review be sought by writ of error or by appeal, the Appellate Court shall have full power to render such judgment upon the records as law and justice shall require."

Here was a controversy which in its entirety was of equitable cognizance, and it was tried substantially as a suit in equity is tried and from the judgment rendered an appeal was taken and we submit that the case should have been reviewed as upon appeal and decided upon its merits.

It is evident from the record that counsel on both sides were somewhat uncertain as to the procedure to be followed. In the order made upon the answer of the Bank, the terminology of equity was used. Before entering upon the trial, a jury was waived in writing. This was appropriate to a suit at law. But done in a suit in equity it was mere surplusage. The practical result was a trial identical in substance with the usual mode of trial of an equity cause. The Court of Appeals says (Rec., 228), that, "the evidence is in the record in the form of a bill of exceptions, a document

unknown to a court of equity." This is true, but is a mere matter of form and surplusage, for the evidence is also in the record by agreement of the parties and by order of the Court as a "transcript of the evidence introduced at the trial and of all the proceedings occurring at the trial * * * approved as a full and complete transcript and statement of all the evidence introduced and offered, and of all the proceedings appearing at the trial and the same is ordered filed in this cause as such transcript and statement" (Rec., 207). And this was in strict conformity with equity rule 75 promulgated by this Court.

In addition we submit that the case as to these formalities comes within equity rule 19, that "the Court at every stage of the proceeding must disregard any error or defect in the proceedings which does not affect the substantial rights of the parties," and within the amendment to section 269 of Code of Judicial Procedure made by the Act of February 26th, 1919, Chap. 48 U. S. Stat. at large 1919, p. 1181, which provides that:

> "On the hearing of any appeal, certiorari, writ of error, or motion for a new trial, in any case, civil or criminal, the Court shall give judgment after an examination of the entire record before the Court, without regard to technical errors, defects, or exceptions which do not affect the substantial rights of the parties."

This is the last, the most authoritative and most comprehensive expression of the law with respect to the significance of mere form in the law. It is the expression of a liberal spirit and its terms are to be liberally construed. It calls for a determination of

the controversy between the parties hereto upon the merits and as their substantial rights may require.

II.

Considered as a suit at law, the case was subject to review upon its merits and in this respect we submit that the decision of the Court of Appeals is in direct conflict with the opinion of this Court in Coler *vs.* Cleburne, 131 U. S. 162, which as to procedure is identical with the case at bar.

Here, it must be remembered, there is no conflict of testimony. The execution of the contract of purchase was admitted by all the parties. There was no question between them as to its construction. The issue, and the only issue, was well stated at the trial by Mr. Jones who was counsel for the Bank and the interveners as follows (Rec., 17):

> "The question, as we understand it, is, as to whether or not the title furnished is a title that complies with the contract executed between these parties. There is no charge on the part of anybody of bad faith or anything of that kind; but purely a question as to whether the title furnished was the title required by the contract. And if it was, the money, as we understand it, belongs to the seller, Keith and his associates; if that title was not furnished, then, of course, the money belongs to the oil company. I think that is the only real issue in this case."

So the question was as to the sufficiency of the title furnished by the interveners, was it "a good and marketable title to all of said property?"

The petitioner introduced in evidence the contract and evidence of the deposit of the money by it with

the Bank. It then introduced the abstract of title originally furnished, which is Exhibit 3, a long document extending from p. 128 of the record to p. 205. Exhibit 4 was a statement of the objections made by petitioner to the sufficiency of the title shown (Rec., 23, *et seq.*) of which notice was given to the Bank and the several interveners. There followed correspondence between the parties and their counsel as to the validity of these objections, which shows that the interveners without admitting their validity, sought to obviate them, but all to no purpose, however, as to satisfying the petitioner, which definitely refused on July 11th, 1918, to accept the title furnished as a good and marketable one, and demanded a return of the deposit.

A demurrer to the evidence by the defendants was overruled, and the defendants then introduced what they had offered to petitioner in the way of supplementing the original abstract of title furnished by them. (Rec., 63-127.)

Upon this evidence which sums itself up in the original abstract of title furnished by the interveners, the objections thereto made by the petitioner, and the supplementary matter submitted by interveners to obviate those objections, the case was submitted to the Court for decision.

Now, in this there was not and could not be any conflict of testimony. Whatever the interveners showed as to their title, by the abstract they originally furnished and by their supplements thereto was their abstract or evidence of title. Whether it made a good and marketable title was another matter.

And so as to the objections made by the petitioner, there was no question of fact about them. They simply raised the question, was the abstract of title as furnished a good and marketable one or did the supplementary matter make it so?

A finding of facts could be nothing more than that the abstract of title contained in the record was the abstract of title furnished by the interveners, and a request for a declaration of the law could upon the one side, be nothing more than that the abstract of title shown was not a good and marketable one, and so did not comply with the contract and upon the other side that it was a good and marketable title and so did comply with the contract.

The entire argument of the case by the parties necessarily carried with it requests for such declarations of law and specific requests would have been mere formal surplusage.

The case in the matter of practice and procedure is clearly within the ruling of Coler *vs.* Cleburne, 131 U. S. 162. There as here a jury was waived in writing and there was no specific request for a finding of facts and none for a declaration of law. And there was no conflict of testimony. The suit was against the City of Cleburne, to recover upon some bonds which had been issued by the city. It was contended that the bonds were illegal, and the facts upon which their illegality was predicated were not disputed. The issue therefore was one of law. There as here, there was a bill of exceptions which set out all the evidence and the procedure in the trial court. In each of the cases the

Court decided this single issue so submitted, and in the cited case this Court held that the state of the record entitled the defeated party to a review upon the merits, saying, l. c., p. 163:

> "There is no special finding of facts, but there is a bill of exceptions, which after setting forth what was proved, states that the Court on the pleadings and proof, found the law for the defendant, and rendered final judgment for it and against the plaintiff, for costs of suit. This is a sufficient special finding of facts to authorize us, under Sec. 700 of the Revised Statutes, to determine whether the facts found are sufficient to support the judgment."

The authority of Coler *vs.* Cleburne is not impaired by any later case.

In Romana Guazon *vs.* Compania General, 245 U. S. 86, there was a writ of error and an appeal. One or the other must be dismissed. This Court dismissed the appeal holding the case to be one for review by writ of error. The Court said, l. c. 88:

> "This judgment evidently proceeded upon the determination of questions of fact.
>
> The writ of error was the proper method by which to review the judgment of the Supreme Court of the Philippines. * * * The case being properly here upon writ of error, the appeal must be dismissed. Upon such writ, the case having been decided upon issues of fact, this Court will not reconsider the conclusions of the lower court, which find support in the record, in reaching its judgment."

In the case at bar the fact was that the interveners presented an abstract of title as to the identity of

which there was not and could not be any question and the sole issue arising was one of law, viz: was that abstract of title a good and marketable one.

And so in the case of Ana Maria Sugar Co. *vs.* Thomas Quinones, 254 U. S. 245. Writ of error was the appropriate method of review. The case was, so far as here to be considered, one involving questions of fact "raised by conflicting testimony." The Court said, l. c. 249:

> "Nor was it contended in the Circuit Court of Appeals that there was no legal evidence on which the insular court could properly rest its finding. Ten of the assignments of error were directed to findings of fact by the Supreme Court. As these assignments of error raised no question of law, and as the Circuit Court of Appeals had no power to review findings of fact in an action of law, it properly denied consideration to these ten assignments of error."

In the case at bar, as in Coler *vs.* Cleburne no question of fact was involved.

III.

Whether the case was at law or in equity it should have been decided upon its merits, because the record clearly and definitely presented the controversy between the parties, an issue of law upon undisputed facts, the facts as clearly presented by the record as if in terms found by the Court and the issue of law as manifest as if a declaration of the law had been in terms asked for by each of the parties.

Since Coler *vs.* Cleburne was decided, there have been amendments of the equity rules and of the Code of

Judicial Procedure the purpose of which was to secure in every case whatever its form might be, a decision, if possible upon the merits, and to do this in a simple way. And so it is provided by equity rule 19, that:

> "The Court at every stage of the proceeding must disregard any error or defect in the proceedings which does not affect the substantial rights of the parties."

No substantial right of the interveners can be affected by a decision upon the merits. They are not precluded from any defense they may have. Their evidence is all in the record, and respecting it, there is no dispute. They knew what the contention of the intervener was respecting the law. They were as well advised of it as if there had been a specific request for a declaration of law.

It is now clearly intended that the form of the suit shall be subordinated to the substantial rights of the parties, for equity rule 23 provides that:

> "If in a suit in equity a matter ordinarily determinable at law arises, such matter shall be determined in that suit according to the principles applicable, without sending the case or question to the law side of the Court."

In harmony with these rules promulgated by this Court, Congress amended the Judicial Code, adding Section 274a, as follows:

> "In case any of said (Federal) courts shall find that a suit at law should have been brought in equity, or a suit in equity should have been brought at law, the Court shall order any amendments to the pleadings which may be necessary to conform them to the proper practice. Any

party to the suit shall have the right, at any stage of the cause, to amend his pleadings so as to obviate the objection that his suit was not brought on the right side of the court. The cause shall proceed and be determined upon such amended pleadings. All testimony taken before such amendment, if preserved, shall stand as testimony in the cause with like effect as if the pleadings had been originally in the amended form."

No amendment to the pleadings was deemed necessary, inasmuch as the single issue of law was clearly presented. At the last by concurrence of all parties the case was dealt with as a suit in equity and was appealed as such.

The Judicial Code was further amended by adding section 274b, as follows:

"In all actions at law equitable defenses may be interposed by answer, plea, or replication, without the necessity of filing a bill on the equity side of the court. The defendant shall have the same rights in such case as if he had filed a bill embodying the defense or seeking the relief prayed for in such answer or plea. Equitable relief respecting the subject matter of the suit may thus be obtained by answer or plea. In case affirmative relief is prayed in such answer or plea, the plaintiff shall file a replication. Review of the judgment or decree entered in such case shall be regulated by rule of court. Whether such review be sought by writ of error or by appeal the Appellate Court shall have full power to render such judgment upon the records as law and justice shall require."

To "make assurance double sure" that no case should miss being heard and determined upon its merits

Section 269 of the Judicial Code was amended in 1919 by adding thereto the following provision:

> "On the hearing of any appeal, certiorari, writ of error or motion for a new trial, in any case, civil or criminal, the Court shall give judgment after an examination of the entire record before the Court, without regard to technical errors, defects or exceptions which do not affect the substantial rights of the parties."

This applies to suits of every kind, civil and criminal, and to civil suits, whether at law or in equity, and by whatever process review may be sought.

The action of the Court of Appeals, is, we submit, in contravention of these rules and statutes and virtually nullifies them. There was no examination by it of the entire record before it, and the judgment of the Court was based entirely upon an alleged technical error or defect.

If that was proper in this case, it will be proper in any case arising and the result will be a virtual nullification of the rules and statutes cited.

This Court has twice passed upon the amendment to the Code of Judicial Procedure made in 1919, and in each case has construed it liberally and to effectuate its manifest purpose, holding in Camp *vs.* Gress, 250 U. S. 308, l. c. 318, that thereby

> "The duty is especially enjoined of giving judgment in appellate proceedings without regard to technical errors, defects or exceptions which do not affect the substantial rights of the parties."

In Horning *vs.* District of Columbia, 254 U. S. 135, a criminal case, the trial court had practically, and

almost in express terms, directed a verdict of guilty, and yet this Court affirmed the judgment, saying, l. c. 138:

> "Perhaps there was a regrettable peremptoriness of tone, but the jury were allowed the technical right, if it can be called so, to decide against the law and the facts, and that is all there was left for them after the defendant and his witnesses took the stand. If the defendant suffered any wrong, it was purely formal, since, as we have said, on the facts admitted there was no doubt of his guilt."

And the amendment of 1919 is cited in support of this ruling.

The decision of the Court of Appeals herein is in direct conflict with these cases. They vitalize the amendment, that emasculates them. And the decision of the Court of Appeals is far-reaching in its consequences. If it stands, all that has been done during the last decade for the reform and simplification of judicial procedure will be nullified, for we have here a case decided on a mere matter of form, a technicality as to which counsel were in doubt and the court itself divided in opinion.

IV.

The subject matter of the contract was real estate, and the question of "good and marketable title" was one of local law. Canady *vs.* Miller, 102 Kan. 577.

The title to some of the land was good but objection was made to the title of about one hundred and sixty acres as being fatally defective and that presents the controversy in this case.

Prior to September 18th, 1893, Joseph J. Crippen, Henry J. Crippen and Henry J. Putnam, as copartners under the firm name and style of Crippen, Lawrence & Company, having their domicile and principal place of business in Denver, County of Arapahoe and State of Colorado, were the equitable owners of the land, the legal title being held for them in naked trust by J. E. Putnam.

On September 18th, 1893, Crippen, Lawrence & Company made a general assignment of all their property for the benefit of all their creditors to one Stephen H. Standart. This assignment included all the real estate and interest in real estate of the firm "whether held in the said copartnership name, or in the name or names of either or any one or more of the said parties of the first part or in the name or names of any other person or persons" and "including all lands and real estate and interests in land and real estate" in Butler County, Kansas (Rec., 51-3).

On the same day Standart accepted in writing the trust so reposed in him (Rec., 54).

Standart gave bond and qualified as assignee and proceeded to administer the assigned estate under the direction of the District Court of Arapahoe County, Colorado, until February 6th, 1899, when he filed his final report, and he and the sureties on his bond were discharged (Rec., 64).

On September 21st, 1893, J. E. Putnam who held the legal title to this land in trust for Crippen, Lawrence & Company, conveyed it to Standart as assignee. In this deed he recited the assignment of Crippen,

Lawrence & Company, that he held the title in trust for them and that he made the conveyance to Standart, assignee, at their request (Rec., 45).

October 12th, 1893, Standart, as assignee filed his inventory of the assigned estate in which by specific description he included the land in question (Rec., 109 and 110).

Later Standart, as assignee, arranged for the sale of this land to Benjamin Jenkins. To accomplish the sale he presented his petition to the Colorado Court, limited to this land, setting out the agreement with Jenkins, the terms of the sale, among others that it was subject to a mortgage for $1,200.00, that it was for the best interests of the assigned estate and its creditors to sell the land, and that he had no personal interest in the transaction. The sale was approved by the Court (Rec., 68), and pursuant to this approval a deed for the land was made to Jenkins (Rec., 46). All this was in 1894.

As required by the Colorado statute, Joseph J. Crippen had, on behalf of the assignors, on September 22nd 1893, filed an inventory which in general terms included "numerous tracts of land in Colorado and Kansas," and a list of creditors "giving names and amounts of their respective demands, so far as it is practicable to do so at this time, which is hereunto annexed." And, further, as to creditors, that among other liabilities are "debenture bonds of the said firm aggregating $530,800.00 to numerous persons whose names are entirely unknown to affiant, and of which no record was kept by said copartnership, but the interest upon which is paid to trustees for the holders of

said bonds" (Rec., 111). No more definite information as to these creditors appears anywhere in th record.

Jenkins, on July 13th, 1896, made conveyance of the land to J. J. Crippen, as trustee (Rec., 153) and Crippen individually and as trustee, conveyed to H. M. McConnell on April 3rd, 1902 (Rec., 153-4). The interveners hold under this line of conveyances.

The Merrimack River Savings Bank of New Hampshire was a heavy creditor of Crippen, Lawrence & Company, this indebtedness being secured by mortgages and guaranteed by Crippen, Lawrence & Company. In January, 1895, the Bank made an agreement with Standart, as assignee, approved by the Colorado Court, whereby Crippen took over these mortgaged properties and was authorized to dispose of them to the best advantage, with a view to protecting the assigned estate against deficiency judgments. (Rec., 80, *et seq.*)

The last order made in the assignment, so far as shown was in 1905, when Crippen made a final report as trustee under the arrangement with the New Hampshire Bank, which report was approved and Crippen discharged. (Rec., 76.) It appears from this report and order of discharge that the properties thus handled by Crippen did not "pay and satisfy the indebtedness of Crippen, Lawrence & Company to said the Merrimack River Savings Bank" and consequently all other creditors were left unpaid.

We may concede that whatever disposition was mad of lands in Colorado by order of the Colorado Court was valid and binding, for those lands were within the jurisdiction of the Court.

The property in question, however, was in the State of Kansas and that State had its own statutory provisions respecting assignments for the benefit of creditors, being Chapter 7 of the General Statutes of 1915, or Chapter 6, General Statutes of 1868. An elaborate Code of procedure is prescribed, but we need take account only of Section 34, Chap. 6 of the G. S. of 1868, which is Section 464 of the G. S. of 1915, and reads as follows:

> "The District Court or Judge thereof in vacation, shall make an order for the sale of all the real or personal estate conveyed by any deed of assignment, either for cash in hand or upon such reasonable credits as shall appear to such court or Judge to be most advantageous to all the parties in interest, and shall, by order, direct the nature of the security to be taken at sales made by assignees under the provisions of this chapter."

This section applies to and governs the disposition of real estate situate in Kansas by an assignee under a foreign assignment.

In Thompkins *vs.* Adams, 41 Kans. 38, the assignment was made in Illinois and under the laws of that State, but there was included in the assigned estate, land in Kansas. The assignee applied to the Illinois court, for authority to sell the Kansas land which was granted and the land was conveyed accordingly. The assignment itself was held to be valid, but the conveyance by the assignee was held to be "without authority, and conveyed no title to the tract." And this was because the section of the Kansas Statute cited by us had not been complied with. The Court said, l. c. 48:

> "The record discloses that this pretended sale from the assignee to the plaintiff in error was made by the consent and with the approval of the County Court of Woodford County, State of Illinois. This sale not having been made in accordance with the law of this State, vests no title to the plaintiff in error."

We have a perfect parallel to this in the case at bar. The sale and conveyance by Standart, as assignee, to Jenkins, was made by the consent and with the approval of the District Court of Arapahoe County, State of Colorado and not in accordance with the laws of Kansas.

In Watson *vs.* Holden, 58 Kan. 657 the assignment was made by a Missouri Banking Company in accordance with the laws of Missouri, but a part of the property involved was land in Kansas of which the Bank was the full equitable owner, the legal title to which was held in naked trust for the Bank by third parties. The validity of an order of the Missouri Court administering the assigned estate transferring the property from the original assignees to their successor was in question; it was admittedly authorized by the laws of Missouri. The Court said, l. c. 666:

> "But the Circuit Court of Missouri, or its judge, could not make an order transferring from Bales and McLeod whatever title to the Kansas land passed to them by virtue of the deed of assignment. Such a transfer could only be made in accordance with the Statutes of this State. A sale could be made only under an order of a court of this State having jurisdiction of the assignment."

Here the full equitable ownership was dealt with as though it was joined with the legal title.

In McNutt *vs.* Nellans, 82 Kan. 424 as here, the controversy was between vendor and purchaser. McNutt contracted to buy land in Kansas and paid five hundred dollars on the contract, an abstract to be furnished showing clear title. The land had been the property of the Lewis Investment Company, an Iowa concern, which under Iowa laws had made a general assignment for the benefit of creditors. The Iowa court administering the estate had made an order authorizing the conveyance of the land, and the title depended upon the deed executed by the assignee under this order.

"The attorneys for the plaintiffs notified the defendant that the abstract was not sufficient, for the reason that it failed to show a decree or order of a Kansas court authorizing the foreign assignee to convey the lands." The law on this subject was by this time so well settled that there was hardly question of it. The Court, l. c. 426, said:

> "There is no serious question here that the deed of the foreign assignee conveyed any title (Thompkins *vs.* Adams, 41 Kan. 38; Watson *vs.* Holden, 58 Kan. 657). The defendant concedes that his title was defective, but insists that he was entitled to a reasonable time within which to perfect it. In this we concur."

Under these decisions the title of the interveners to the land in question was defective so far as exhibited by the abstract first presented.

The interveners contended in the lower courts that:

> "The legal title stood in the name of J. E. Putnam, and by him was conveyed and passed by his independent deed to Standart as assignee, and having so passed to Standart as assignee by his deed, entirely independent of any order from the Court of Colorado administering the assignment or of any other Court, Standart could by his voluntary deed, pass the legal title on to another, and this he did by his conveyance made to Jenkins, as shown by the abstract. Boyer *vs.* Sims, 61 Kan. 593; Webb vs. Rockefeller, 66 Kan. 160."

But Standart got the legal title just as he got the beneficial interest, by conveyance from the holder of it, without any order of the Court, and he had and held by conveyance from the owners of the equitable estate and the holder of the legal title all the interest in the land that an assignee for the benefit of creditors could have. This interest of the assignee was by the Statutes of Kansas brought under control of the Kansas court and could be conveyed by him only under the sanction of that court.

He could not of his own volition and regardless of the Kansas court convey the legal title any more than he could convey the beneficial interest and what is more he never assumed to do so. He conveyed or undertook to convey his entire interest under the direction of the Colorado court which had no jurisdiction of the matter and so his conveyance was invalid.

The cases cited by counsel are not to the point.

Boyer *vs.* Sims holds simply that when lands are conveyed to the grantees as trustees, "and to their

assigns," but without naming the beneficiaries or expressing the terms of the trust, the title is not merely a nominal one or void as to the trustee, but a power of disposition of the trust estate vests in the grantees, and the conveyance cannot be deemed a direct one to the beneficiaries, under section 13, chapter 113, General Statutes of 1897. In this case the Court had occasion only to construe the statute cited. In the case at bar the beneficiaries were named and the terms of the trust expressed and the administration of the trust and the power of disposition of the trust estate was under the direction and control of the appropriate Kansas court. The case of Webb *vs.* Rockefeller calls for no special consideration, as it simply reaffirms what was decided in Boyer *vs.* Sims. The cases cited deal only with the statute of uses, while we have to deal with the statute governing assignments for the benefit of creditors.

The District Judge dealing with this phase of the case said, (Rec., 215-216):

> "The court of Colorado administering the trust estate was just as competent to determine whether any beneficial interest passed to the assignee for the benefit of creditors, and whether it was for the best interest of the estate being administered by it to retain through its assignee the legal title by him received to the lands in dispute as would have been a court of this state, and any decision of this question by the Colorado court is binding upon, not only the parties litigant in that court, but upon the courts of this state as well. True, if that court had determined any beneficial interest had passed from Crippen, Lawrence &

> Company by virtue of their deed of general assignment and had ordered the assignee to realize thereon for the benefit of the estate in its hands, and, in so doing had sold and conveyed the land in the execution of his trust as assignee, such conveyance must have been made in compliance with the laws of this state and under order of the court of this state having jurisdiction of the res. But, such was not the decision of the Colorado court. The deed made by the assignee was in legal effect and operation merely a relinquishment of the naked legal title to the trustee of the owner of the valid first mortgage lien on the lands to enable him to handle the lands for the benefit of the mortgagee. As this naked legal title had come to the assignee by independent conveyance, so by his independent conveyance he could pass the same on to another as he did in this case."

But the decisions of the Supreme Court of Kansas cited by us are plainly to the effect that the Colorado court was without jurisdiction to determine anything with respect to land in Kansas, either the naked legal title or the equitable ownership. As was said in Thompkins *vs.* Adams, *supra*, l. c. 45:

> "There is one question that we think controls the case, and disposes of it so far as the rights of the plaintiff in error are concerned. Vattel lays down as a principle of international law, that immovable property is to be disposed of according to the law of the country in which it is situate. This principle we believe has universally been applied as between the States that form our general government, and it has always been held that real estate situate within one of the states is alone subject to the laws of

that state respecting its alienation, distribution and other dispositions. That the legislation of a state can have no extra-territorial force is fundamental, and in the very nature of things incapable of modification, and unproductive of exception."

It is mere casuistry to say that the legal title came to Standart by the independent conveyance of J. E. Putnam and that Standart by his independent conveyance passed it on to Jenkins. Of what were these convenances independent? If it signifies anything it must be independent of the assignment for the benefit of creditors. But was it so? The undisputed facts are that Putnam held this title in trust for the assignors; that by their direction he conveyed it to Standart as assignee and that this was for the purpose of perfecting the title conveyed by the assignment. In making this deed he was nothing more than the factotum of the assignors.

The assignee did not take this conveyance independently of the assignment. It was made to him in terms as assignee; and he took the legal title in that capacity and none other. And when he came to pass on it, as we have seen, he applied as assignee to the Colorado Court for authority to do so. The court assumed to give him that authority as assignee and as assignee he made the conveyance to Jenkins. So throughout instead of independence there was the utmost dependence upon the assignment.

The interveners, however, did not stand upon the abstract of title first presented by them, but undertook to obviate the objections made.

So far as concerned the reversionary interests of the assignors, they relied as to J. J. Crippen upon his deed of general warranty to H. M. McConnell, under whom they claim title. From Henry J. Putnam they obtained a quit claim deed. As to Henry J. Crippen, who apparently died intestate (Rec., 95) they produced affidavits to show that he died in December 1893 (Rec., 93), leaving a widow and two daughters. Under the laws of Kansas the widow took one-half of this property. She died in 1906, whether testate or intestate does not appear. (Rec., 93.) The daughters made quit claim deeds in 1918 to C. R. Nuttle, the lessor under whom interveners hold. Under these circumstances any right the widow may have had may be still outstanding.

As to the creditors they produced the certificate of the Clerk of the Colorado court as follows (Rec. 111):

> "That the records in said cause do not show that any of the creditors or debtors of said estate were minors, lunatics, or persons suffering under any legal disability, and do not show that any guardian or conservator, or other persons acting in a representative capacity, were appointed by the court, or appeared in said proceeding in connection with the administration of said estate."

The record of the assignment proceedings so far as produced by the interveners did indeed fail to show any of the matters recited in the certificate of the clerk and more than that they failed to show anything whatever with respect to creditors, except the dealing with the Merrimack River Savings Bank, the result

of which was that the property mortgaged to it was insufficient to pay the debts secured by the mortgages.

As to the creditors generally, all we have is the affidavit of J. J. Crippen made in the course of the assignment proceedings that "among other liabilities are debenture bonds of the said firm aggregating $530,800.00 to numerous persons whose names are entirely unknown to affiant, and of which no record was kept by said co-partnership, but the interest upon which is paid to trustees for the holders of said bonds." (Rec., 111.) There is nothing in the record to show that any of these were brought into the proceedings or appeared even by the trustees through whom the interest was paid, for the Clerk of the Colorado court certifies as shown above, that no "guardian or conservator or other person acting in a representative capacity were appointed by the court, or appeared in said proceeding in connection with the administration of said estate."

Under these circumstances nothing done in the Colorado administration could affect the rights of unnamed and unknown creditors as to land situated in the state of Kansas.

Was the title thus disclosed by the abstract furnished a "good and marketable" one?

Wesley *vs.* Eells, 177 U. S. 370, was a suit for specific performance of a contract of purchase and sale of land. The defense was that the land was subject to a lien by the state of South Carolina, which the seller contended had been released by tender of certain scrip. The state court had held on a similar

state of facts that the scrip was not legal tender. In this court it was insisted that the tender was good and the title exhibited was a good and marketable one. This court said, l. c. 376:

> "It is a settled rule of equity that the defendant in a suit brought for the specific performance of an executory contract will not be compelled to take a title about which doubt may reasonably exist or which may expose him to litigation. (Citing authorities.) And speaking generally, a title is to be deemed doubtful where a court of coordinate jurisdiction has decided adversely to it or the principles on which it rests." (Citing authorities.)

The interveners did not stand upon their abstract, as first presented, but invoked the statute of limitations and adverse possession for more than fifteen years as making their title good and marketable.

The Kansas statutes of limitations, General Statutes of 1915 are as follows:

> "Sec. 6905: Actions for the recovery of real property or for the determination of any adverse claim or interest therein, can only be brought within the periods hereinafter prescribed, after the cause of action shall have accrued, and at no time thereafter."

Provision is then made for cases of sales by executors on order of court, etc., and for tax sales and then follows the general provision:

> "An action for the recovery of real property not hereinbefore provided for within fifteen years."

And Section 6906, as to persons under disabilities:

> "Any person entitled to bring an action for the recovery of real property who may be under any legal disability when the cause of action accrued, may bring his action within two years after the disability is removed."

Section 6907 provides:

> "Civil actions other than for the recovery of real property, can only be brought within the following periods, after the cause of action shall have accrued and not afterwards.
>
> First: Within five years. An action upon any agreement, contract or promise in writing.
>
> Second. Within three years. An action upon contract not in writing, express or implied; an action upon a liability created by statute, other than a forfeiture or penalty. * * * *
>
> Sec. 6908. If a person entitled to bring an action other than for the recovery of real property, except for a penalty or forfeiture, be at the time the cause of action accrued under any legal disability, every such person shall be entitled to bring such action within one year after such disability shall be removed."
>
> Sec. 6910. If when a cause of action accrues against a person he be out of the state, or has absconded or concealed himself, the period limited for the commencement of the action shall not begin to run until he comes into the state, etc."

In the present case the debtors, Crippen, Lawrence & Company, were residents of Colorado and it does not appear that they ever came within the jurisdiction of the State of Kansas.

In McNutt *vs.* Nellans, 82 Kan. 424, the seller had undertaken to make his title good by a suit, which had

ripened into judgment against the assignor for the benefit of creditors, the assignee under that assignment and the purchaser to whom the assignee had by order of the Iowa court, conveyed the land. The Court held that this did not make a clear or marketable title, saying, l. c. 428:

> "There is another feature of the judgment which, though not suggested in the briefs, in our opinion adds to the doubtful character of the title. The judgment binds no one except those who were parties to it and their privies. The Court finds that the only defendants were the Lewis Investment Company, Nelson Royal, its assignee, and H. Gardner Talcott, to whom the assignee conveyed the land. While the foreign assignee and all creditors of the assignor who participated in the assignment are bound by the judgment so far as the rights of a purchaser relying upon it are concerned, it binds no one else. Creditors of the assignor *who were citizens and residents of Kansas and who did not participate in the assignment would not be bound by the judgment; and whether there were such creditors does not appear.*"

The interveners then as a last effort to clear up their title obtained and exhibited to the petitioner the affidavits of Nuttle, Mannion and King (Rec., 105), all to the same effect, that of Nuttle being as follows:

> "State of Kansas,
> Butler County, ss:
>
> C. R. Nuttle, being first duly sworn, deposes and says:
>
> "That he is the owner of the above described real estate; that he and those under whom he claims have been in the open, notorious, absolute and peaceable possession of said land since

the year 1896; that he and those under whom he claims, have paid the taxes on said land for each and every year since said time, and that S. H. Standart, Crippen, Lawrence & Company, or J. J. Crippen have neither occupied said land, paid any taxes on it, received any rent therefrom, have never laid any claim to or interest therein, and have never assumed any control over same and that neither of said parties nor anyone else have ever been in possession thereof except this affiant, and those under whom he derived his title.

C. R. NUTTLE."

The petitioner declined to accept these as making a good and marketable title and this litigation followed:

Whether such affidavits are sufficient for the purpose for which they were offered has received careful consideration by the Supreme Court of Kansas in a case which was twice heard, Beeler *vs.* Sims, 91 Kan. 757, and the same case on rehearing, 93 Kan. 213. The defect in the title arose from the failure to make a person, who held the fee title of record a party to a foreclosure suit. The chain of title which the adverse possession was to support had its beginning April 7th, 1891; the controversy in suit arose in October 1912, so that there was an unbroken chain of title for more than twenty-one years. Two affidavits were attached to the abstract, in each of which the affiant testified that he had been acquainted with the land for the past twenty years, and knew that no one had been in possession except Clint C. Rush and B. C. Mields and their grantees under them, and that there had been no adverse possession to them or to their

grantees. The vendor held the title of Rush and Mields, who were respectively purchaser at the foreclosure sale and purchaser at a tax sale.

The court said, l. c. 761:

> "The outstanding title of Pieper may or may not be barred by adverse possession, depending upon the facts. If the defendant is compelled to take the title shown upon this abstract, he must necessarily take the risk of proving such adverse possession. It is true that two persons have stated in the most general terms facts from which, at some time not stated, possession adverse to the Pieper title might be inferred, but the examination of these and other witnesses who may be produced in another action to assert or overthrow the apparently outstanding title may result in a different conclusion. The abstract, giving full effect to all that is contained in the affidavits, does not show a merchantable title within the definitions heretofore given in cases in this state or in the authorities generally. We are inclined to hold, also, that this is not a case like Van Gundy *vs.* Shewey, 90 Kan. 253, 133 Pac. 720, where incidental matters such as intestacy, heirship and the satisfaction of claims against an estate not probated may be shown by affidavits upon an abstract of the title of a deceased owner. Here the abstract shows an outstanding title in fee in Pieper. Its validity depends upon matters of fact concerning notice, possession and periods of limitation. To require a purchaser to accept affidavits upon such matters would impose too great a hazard and would be unjust. Whether Pieper is living or dead does not appear, and so another element of uncertainty arises, respecting heirship, minority, and the period of limitations."

* * * *

"Cases are cited holding that when the record shows title clear in a party, and a purchaser has no notice of any outstanding equities or titles, he may, as a rule, safely purchase from such party, and the holder of the unrecorded title will be estopped as against a purchaser for value in good faith. This is undoubtedly true; Courts do not favor secret liens, interests, or titles withheld from record where notice is not imparted by possession or otherwise. These rules would doubtless be applied if an action were brought to test the validity of the outstanding title. The question here, however, is whether the defendant should be required to assume the burden of such prospective litigation. It seems clear that he should not."

Upon the rehearing, 93 Kan. 213, there was some question as to the significance of the first opinion, whether it was based upon the sufficiency of the showing made by the affidavits or whether affidavits could be used to show that an outstanding title was divested by limitation or adverse possession. The Court said, l. c. 217:

"The former opinion, however, was not based on insufficient statements of the affidavits, but upon the principle that a contract to furnish an abstract showing a marketable title is not complied with by presenting one that purports to show by affidavit only that the fee title, which appears by the abstract to be outstanding, has been divested by limitation or adverse possession. Repeating the language of the Nellans case, "A title is doubtful if it exposes the party holding it to the hazards of litigation." (McNutt *vs.* Nellans, 82 Kan. 424, syl. No. 2. 108 Pac. 834.) Whether the holder of the Huntin title, be he adult or minor, under disability or not,

> is barred by limitation or adverse possession depends of course upon extrinsic facts. Must the vendee take the risk of proving such facts?"

The case cited we submit is directly in point. Here was, as there, an outstanding title of record. Standart held the full title to the land and he was never divested of it by any proceeding of record. He held title for the benefit of creditors of whom there were many and unpaid, certainly not shown in any way to have been paid. Nor is it shown here that they were barred by mere lapse of time. There was the chance recognized by the Kansas court in McNutt *vs.* Nellans, *supra*, that some of them were under disability or were residents of Kansas, and therefore the attempt was made to clear up the title by an *ex parte* showing of adverse possession. This was a matter of local law and the Kansas court in Beeler *vs.* Sims, *supra*, held as explicitly as possible that this could not be done. The District Court taking no account of this Kansas decision, held (Rec. 218) that:

> "As shown by affidavits found in the record, the venders of the leasehold interest, and their grantors, had been in actual, open, adverse, notorious possession of the premises in question for more than fifteen years prior (subsequent) to the making of the deed by Crippen as trustee to McConnell. Without any validity, whatever, therefore, in the conveyance of Standart as assignee to Jenkins, interveners entering into possession under their leasehold interests, or, the plaintiff on transfer of the same to it, would possess an absolute right and title to the premises, impervious to a possible attack from any claimant thereon, as shown by the abstract and record in this case."

The series of Kansas cases cited by us is plainly to the effect that the deed from Standart, as assignee, to Jenkins, was of no validity whatever, and the case of Beeler *vs.* Sims as plainly holds that the affidavits in the record, those of Nuttle, Mannion and King were not competent to show title by adverse possession. Applying what was said by this court in Wesley *vs.* Eells, *supra,* the title shown was a doubtful one because a court of co-ordinate jurisdiction had decided adversely to it and to the principles upon which it was based.

The judgment of the District Court should have been reversed and the case remanded with directions to enter judgment for the petitioner.

Respectfully submitted,

F. W. LEHMANN,
HARRY E. KARR and
CHARLES G. YANKEY,
Solicitors and of Counsel
for Petitioner.

NOV
WM. R.

IN THE

Supreme Court of United States

OCTOBER TERM, 1922.

LIBERTY OIL COMPANY,
Petitioner,

v.

THE CONDON NATIONAL BANK (A CORPORATION),
Respondent,
AND ATLAS PETROLEUM COMPANY (A CORPORATION), C. M. BALL, ISADORE LITMAN, P. G. KEITH AND J. H. KEITH,
Interveners, Respondents.

No. 98.

WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS—THE EIGHTH CIRCUIT.

BRIEF AND ARGUMENT FOR RESPONDENTS.

J. H. KEITH,
HUGO T. WENDEL, AND
JOHN J. JONES,
Solicitors and of Counsel for Respondents.

IN THE

Supreme Court of United States

OCTOBER TERM, 1912.

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WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS—THE EIGHTH CIRCUIT.

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ARGUMENT.

The purpose of this brief is to show:

1. That this suit, as instituted by the petitioner, was one at law. It was so tried and considered by all of the parties to this litigation from the time it was

instituted until after it was dismissed by the United States Circuit Court of Appeals. The Liberty Oil Company filed a pleading on the law side of the court that it designated as a petition and the parties thereto as plaintiff and defendant. It brought the action against the Condon National Bank which it named as defendant. As such defendant the Condon National Bank filed an answer asking that other parties than the defendant be brought into the action and required to set up their claim, and it was so ordered. Thereupon said parties so brought and filed an answer and cross petition to the original petition of the Liberty Oil Company. The Liberty Oil Company then filed an answer to the cross petition. All parties waived trial to and by a jury and the case was tried by and to the court on the original petition filed by the Liberty Oil Company; the answer and cross petition of such new parties; and the answer of the Liberty Oil Company to such cross petition. The bank paid the money into court but was not, at the time of the payment, discharged because "At the time the application was made a question of liability for interest was suspended until this (the trial in the District Court) hearing, until the matter could be finally determined." (Tr. 17.)

There never was a suggestion that the action was other than one at law until after the case was determined by the United States District Court for the District of Kansas, Third Division, and until the brief of the defendants in error was filed in the United

States Circuit Court of Appeals. There were no requests for findings of facts, either general or special by either party or any requests for declarations of law. The United States Circuit Court of Appeals for the Eighth Circuit dismissed the proceeding.

2. That the second and third points in the Liberty Oil Company's brief, in this case, are not the law; that considered as a suit at law the case was not subject to review, upon its merits, in the United States Circuit Court of Appeals; and that there was nothing before that court; and that the case was rightfully dismissed.

The opinion dismissing this case in the Circuit Court of Appeals by Carland, Circuit Judge, is, in our judgment, a complete answer to the second and third points in the brief of the Liberty Oil Company. It reads:

> "Appellant commenced this action as an action at law against the Condon National Bank to recover the sum of $100,000.00, which the bank held on deposit to be paid to either appellant or appellees as the terms of a contract between them should be or not be performed. The case, although an action at law, has been brought here by appeal instead of by writ of error. Section 1649a U. S. Comp. Stat., 39 Stat. 727, reads as follows:
>
> 'No court having power to review a judgment or decree rendered or passed by another shall dismiss a writ of error solely because an appeal should have been taken, or dismiss an appeal solely because a writ of error should have been sued out, but when such mistake or error occurs it shall

disregard the same and take the action which would be appropriate if the proper appellate procedure had been followed.' "

We therefore disregard the mistake and take the action which would be appropriate if the proper appellate procedure had been followed. The bank in its answer made the following allegations:

"That heretofore and on the 24th day of May, 1918, the Liberty Oil Company, incorporated, entered into a written contract with the Atlas Petroleum Company, a corporation; C. M. Ball, Isadore Litman, P. G. Keith and J. H. Keith, a copy of which contract is attached to plaintiff's petition, marked Exhibit 'A', reference to which contract is hereby made, as a part hereof, as fully and to the same extent and with like effect as tho herein fully set out:

* * * * *

"That in accordance with and under and by virtue of said Exhibits 'A' and 'B' attached to plaintiff's petition, plaintiff paid to this defendant on the 24th day of May, 1918, the sum of One Hundred Thousand Dollars ($100,000) which said sum said defendant now has in its possession and under its control; that this defendant has no interest whatever in said sum of $100,000, except to see that the same is passed into the hands of the parties entitled thereto, and to discharge itself of all liability under said instrument in writing, copy of which is attached to plaintiff's petition, marked Exhibit 'B.'

"That the plaintiff herein has demanded of the defendant the said sum of $100,000, and that the said Atlas Petroleum Company, C. M. Ball, Isadore Litman, P. G. Keith and J. H. Keith have likewise

and also demanded that the defendant herein pay and deliver to them the said $100,000, so deposited with this defendant under said Exhibit 'B' of plaintiff's petition.

"This defendant, not knowing who is justly entitled to said sum of $100,000, has heretofore refused to pay or deliver the same to either the plaintiff or the said Atlas Petroleum Company, C. M. Ball, Isadore Litman, P. G. Keith and J. H. Keith, and now asks that the said Atlas Petroleum Company, C. M. Ball, Isadore Litman, P. G. Keith and J. H. Keith, and each of them, be made parties to this cause, and brought into this action, and required to set up their claim to said sum of $100,000."

The case subsequently came up for hearing upon the petition of appellant and the answer of the Bank. The court ordered that appellees other than the Bank be made parties to the action and that they should set up their claim or interest in the fund in controversy, within twenty days. Appellees other than the Bank by answer and cross petition set forth their claim to the fund in controversy. Appellant answered the cross petition. The Bank paid the money into court and had nothing further to do with the controversy. The action between appellant and appellees other than the Bank proceeded as an action at law as if had been commenced. Seven months after issue joined the case was heard by the court, a jury being duly waived under the statute allowing a jury to be waived in law actions. The court found generally for the appellees other than the Bank and awarded judgment in their favor of the $100,000.00

and interest then on deposit in the registry of the court. No equitable right or claim to the fund was pleaded by either appellant or appellees other than the Bank. The only error insisted upon in this case is the sufficiency of the evidence to support the judgment, it being claimed that the evidence showed that appellees other than the Bank did not furnish an abstract of title to the real estate upon which the leases sold were given that was marketable, there being an alleged defect in what is known as the Crippen Lawrence & Co. tract. The question as to whether the evidence was sufficient to justify a finding in favor of appellees other than the Bank was in nowise raised in the trial court either by a request to find the facts or to declare the law. The evidence is in the record in the form of a bill of exceptions, a document unknown to a court of equity. The bill of exceptions does not disclose any ruling upon any request to find the facts or declare the law by the trial court.

On writ of error which ought to have been the process by which the case was removed to this court our power to review is confined to rulings of the trial court in matter of law. No such rulings having been assigned and argued there is nothing for this court to do except to affirm the judgment below. Assignment of error No. 13, in relation to the admission of evidence is not argued. It is claimed however that in some way the answer by the Bank changed what was a proceeding at law into a proceeding in equity triable here *de novo*.

We think this review is erroneous for the following reasons. Assuming that the answer of the Bank has the same standing as a bill of interpleader under Sec. 274b Judicial Code, 38 Stat. 956, we can assume further that the answer was an equitable defense or proceeding, but that proceeding ended when the court ordered appellees other than the Bank to be made parties. The Bank paid the money into court and went its way released from all liability. The proceeding at law between the other parties went on. It is well settled that when a judgment of interpleader is rendered it puts an end to that proceeding. The parties who are ordered to interplead may commence an action at law or in equity as the facts warrant. In this case the action at law had been commenced and proceeded on to judgment. That the order directing appellees other than the Bank to be made parties to the suit commenced by appellant was an end of that proceeding is supported by Daniels' Chancery P. & P., Vol. 2, p. 1568; *Lynch v. St. John*, 8 Daly (N. Y.) 142; *Feldman v. Grand Lodge A. O. U. W.*, 19 N. Y. Suppl. 73; *Hechmer v. Gilligan*, 28 W. Va. 750. Of course if it shall be claimed that the proceeding by the Bank was in accordance with the laws of Kansas the same result follows because code provisions in regard to interpleader are merely substitutes for the original bill in equity and are governed by the same principles. *Atchison v. Scoville*, 17 (13) Kan. 17.

The proper procedure in actions at law tried by the trial court where a jury is waived has been stated at

almost every term of this court. The cases bearing upon the subject both in the Supreme Court and this court are cited in *Mason v. U. S.*, 219 Fed. 547, and in many cases since that case was decided, the last being *U. S. v. A. T. & S. F. Ry.*, decided January 12, 1921, not yet reported.

3. The original abstract showed a good title to the oil and gas lease in the intervenors in this action.

A portion of the lands involved, to-wit: Lots One and Two (1 and 2), and the East half of the Northwest Quarter (E½ of NW¼) of Section Thirty-one (31), Township Twenty-six (26), Range Five (5) East, Butler County, Kansas, in the year 1893, stood of record in the name of J. E. Putman, of Salina, Kansas. However, in trust for a co-partnership composed of Joseph J. Crippen, Henry J. Crippen and Henry J. Putman, doing business as Crippen, Lawrence & Company. This partnership being insolvent on September 18th, 1893, made as assignment for the benefit of creditors at the City of Denver, Colorado, under the laws of that state. In the deed of general assignment for the benefit of creditors, a Stephen H. Standart was named as assignee to administer the trust. He accepted the same, gave bond, qualified and acted as such assignee. Thereafter, at the request of Crippen, Lawrence & Company, on the 21st day of September, 1893, J. E. Putman conveyed the lands standing in his name to Standart as assignee. This conveyance recites the fact that Crippen, Lawrence & Company being insolvent, had made an assignment for

the benefit of their creditors. Thereafter and on August 31st, 1894, Standart, assignee, conveyed the tract in question, the same being a portion of the lands covered by the oil and gas leases by intervenors sold to plaintiff in error, to one Benjamin Jenkins of Salina, Kansas, by deed of special warranty, who in turn, on July, 1896, conveyed to J. J. Crippen, Trustee, who in turn, on February 19th, 1902, conveyed by deed of general warranty to one H. H. McConnell, from whom by mesne conveyances, regular in form, the title to the lands descended to the grantor in the oil and gas leases held by the intervenors, and sold under the contract in question to plaintiff in error. The reason for the transfer made by Standart, assignee, to Jenkins, and by Jenkins and wife to J. J. Crippen, as disclosed in the abstract, as shown by a certified copy of the record made in the Court of Colorado administering the trust estate of Crippen, Lawrence & Company for the benefit of creditors, was this; certain of the lands of Crippen, Lawrence & Company, including the tract in question, were at the time of their voluntary assignment, heavily incumbered by a valid first mortgage lien thereon to secure indebtedness owned by the Merrimac River Savings Bank of Manchester, New Hampshire, which was threatening foreclosure of said mortgages at the time. In such event, as Crippen, Lawrence & Company were obligated for the payment of the indebtedness so secured should the lands fail to sell at foreclosure sale for an amount sufficient to pay costs, taxes and prior liens on the premises, deficiency judgments would be entered

which would in turn be provable against the bankrupt estate of Crippen, Lawrence & Company, being administered in the Colorado Court for the benefit of creditors. In this condition of affairs the owner and holder of the notes secured by the mortgages on the lands in many counties in Kansas, being willing to accept the lands in payment of the indebtedness in the event J. J. Crippen would consent to act as its trustee and handle and dispose of the lands for its benefit, and thus relieve the bankrupt estate from payment of any deficiency judgments which might be entered, and at the same time merge the equitable rights of the mortgagee in the legal title to the encumbered lands—to accomplish this purpose the transfer from Standart as assignee on application to the Colorado Court, was ordered and made, and the trust accepted and performed by J. J. Crippen. As appears from the foregoing facts the beneficial interest in the real estate involved herein did rest in the insolvent debtors Crippen, Lawrence & Company. The legal title stood in the name of J. E. Putman, and by him was conveyed and passed by his independent deed to Standart as assignee, and having so passed to Standart as assignee by his deed, entirely independent of any order from the Court of Colorado administering the assignment, or of any other court, Standart could, by his voluntary deed, pass the legal title on to another, and this he did by his conveyance made to Jenkins, as shown by the abstract. *Boyer v. Sims*, 61 Kans. 593; *Webb v. Rockefeller*, 66 Kans. 160.

Nothing passed by the deed of general assignment for the benefit of creditors of Crippen, Lawrence & Company to Standart, assignee, save and except whatever beneficial interest they had in the lands in question over and above all valid fixed liens thereon; they did not hold the legal title to the land and they could not convey the same. J. E. Putman held the legal title and this he conveyed by his independent deed, subject however, to all valid existing liens thereon. In this instance it transpired the deed of assignment of Crippen, Lawrence & Company conveyed to Standart as assignee, nothing of value, as was determined by the Colorado Court administering the trust, for the land possessed no value over and above the amount of the valid first mortgage debt resting thereon in favor of the Merrimac River Savings Bank. Therefore the legal title was, by the assignee, transferred by his deed to a trustee of the holder of the valid first mortgage lien on the land in the protection of all creditors of the insolvent estate, and the enforcement of the prior mortgage lien resting upon the land regardless of the assignment laws of this state. The Court of Colorado administering the trust estate was just as competent to determine whether any beneficial interest passed to the assignee for the benefit of the creditors, and whether it was for the best interest of the estate being administered by it to retain through its assignee, the legal title by him receiving the lands in dispute, as would have been a court of the State of Kansas, and any decision of this question by the Colorado Court is bind-

ing upon, not only the parties litigant in that court, but upon the courts of Kansas as well. True, if that court had determined any benificial interest had passed from Crippen, Lawrence & Company by virtue of their deed of general assignment and had ordered the assignee to realize thereon for the benefit of the estate in its hands, and in so doing had sold and conveyed the land in the execution of his trust as assignee, such conveyance should have been made in compliance with the laws of the State of Kansas and under the order of a court of Kansas having jurisdiction of the res. But such was not the decision of the Colorado court. The deed made by the assignee was in legal effect and operation merely a relinquishment of the legal title to the trustee of the owner of the valid first mortgage lien on the lands to enable him to handle the lands for the benefit of the mortgagee. As this naked legal title had come to the assignee by independent conveyance, so by his independent conveyance he could pass the same on to another as he did.

The above is almost literally and is in substance what the District Court set forth in his memoranda of decision, and well states the contention of intervenors on this question.

4. That the title was good by adverse possession.

As said by the trial court, the contract between the parties was made May 24, 1918. If we regard the deed made by Standart, assignee, to Jenkins, and by Jenkins to J. J. Crippen as trustee, as a mere relinquishment of

the non-beneficial legal title held by the assignee of Crippen, Lawrence & Company for the benefit of creditors to the trustee of the Merrimac River Savings Bank, for the use and benefit of the owner and holder of the valid first mortgage liens on the property and by way of protection of the insolvent estate in his hands —yet said trustee by his warranty deed, with full covenants of seasin, conveyed not only the naked legal title to the property, but also the entire beneficial interest therein, to one H. H. McConnell, February 19, 1902, who in turn, by his deed of general warranty with full covenants of seasin, on January 16, 1903, conveyed to one N. F. Frazier of Butler County, Kansas, the county in which the lands are situate; now, in the absence of a contrary showing, possession follows the title. The statutes of limitation of Kansas are not statutes of presumption. On the contrary, they are statutes of absolute repose. Clause 4 of Section 15 of the Code of Kansas, relative to the time within which action may be brought, provides:

> "An action for the recovery of real property not hereinbefore provided for fifteen years."

Again, there is a statute of Kansas which provides certain disabilities may toll this statute, but an examination of the abstract itself discloses the title to Putman for Crippen, Lawrence & Company, was received March 20, 1893, by virtue of a sheriff's deed made under judicial proceedings, hence any adverse or prior claim to the land under the first clause of Section 15 of the

Code was compelled to institute an action within five years from the date of recording of said deed, March 25, 1893, or remain forever barred of same. Putman, the holder of the legal title, had no beneficial interest in the property, hence no one claiming under him could maintain any action save the partners, Crippen, Lawrence & Company, or some one claiming through or under them. That partnership conveyed all the interest of its partners which they possessed, to Standart as assignee for their creditors. Hence no one claiming under them, save their creditors, would complain. The court of Colorado administering the trust for the benefit of creditors, determined the members of the partnership of Crippen, Lawrence & Company possessed no beneficial interest whatever in the property over and above the amount of the valid mortgage lien thereon held by the Merrimac River Savings Bank. Hence the creditors were cut off and forever barred by the judgment of that court made in administering the trust in their behalf, and the property was applied to the satisfaction of said mortgage. It is thus seen, as shown by the abstract itself, there was no one in esse at the time the contract between the parties in this case was made, who could annoy the plaintiff as purchaser of the leasehold interests from intervenors, by any reasonable or probable claim on said premises.

And again, as shown by affidavits found in the record, all of which were furnished by intervenors as a part of the abstract and title, the vendors of the lease-

hold interest and their grantors had been in actual, open, adverse and notorious possession of the premises in question for more than fifteen years prior to the making of the deed by Crippen as trustee to McConnell. Without any validity whatever therefor in the conveyance of Standart as assignee, to Jenkins, intervenors entering into possession under their leasehold interests or the plaintiff in error on transfer of the same to it, would possess an absolute right and title to the premises impervious to any possible attack from any claimant thereon as shown by the abstract and record in this case.

Counsel for the Liberty Oil Company have cited a number of authorities under proposition four which can have no possible bearing upon the instant case. The first case of *Canady v. Miller*, 102 Kans. 577, lays down a credit principle of law but it is not applicable here. It was decided in that case that a title to real estate acquired by adverse possession was not a marketable title although such title by adverse possession was perfect. That appears to be the law in Arkansas and governed in that particular case because the land under question was located in that state. It will be further noted that the case of *Hollingsworth v. Colthurst*, 78 Kans. 455, cited in the case of *Canady v. Miller, supra*, on the question of satisfactory title, likewise has no application in this case for the reason that the contract in that case provided that the title should be satisfactory to the grantee. The Supreme Court of Kansas said under such a contract, which the parties may make

if they choose to do so, the vendee is the judge of the validity of the title. Such, however, is not the contract in the case at bar requiring the delivery of a merchantable title. This would leave the question of title one of fact and law to be determined by a court and jury and not the vendee.

The cases of *Thompkins v. Adams,* 41 Kans. 38; *Watson v. Holden,* 58 Kans. 657, and *Macknutt v. Neelans,* 28 Kans. 424, are all good law on the facts involved in those cases. They are each cases, however, in which a general assignment was made to a certain assignee, in a foreign state, who, thereupon, as such assignee, sold land located in the state of Kansas without an order from a court of competent jurisdiction. In each of them there was no question about the title to all of the property assigned, being vested in such assignee. The question of whether such assignee could transfer a good and marketable title to land which he had received not under a general assignment for the benefit of creditors, but by virtue of a direct and independent warranty deed, was never raised for the reason that such were not the facts in those cases. The assignee in none of those cases held a portion of the land by virtue of a general assignment for the benefit of creditors, and still other land through warranty deed, all of which was then attempted to be transferred by one conveyance. That distinction is important and determines the question of whether or not it was necessary to first secure an order from a competent Kansas court, before the sale could

be made by such assignee. This distinction was clearly pointed out by the intervenors in the district court; approved by that court and remains our contention at this time.

Counsel for Liberty Oil Company finds no possible support of their contention in the case of *Boyer v. Sims*, 61 Kans. 593, which they cite under point number 4. This case is squarely against them and supports the proposition for which we have contended from the beginning, which is where lands are conveyed, as they were in the instant case, but without naming the beneficiaries the title is not merely a nominal one, but a power of disposition of the estate vests in the grantee and the conveyance can not be deemed a direct one to the beneficiaries. The same doctrine was upheld in the case of *Webb v. Rockefeller*, 66 Kans. 160, in which conveyance was made for the benefit of a third person and named the beneficiary. Commenting upon the power of the grantee to convey the land received under the deed—the court in part said "unless otherwise provided the power of disposition of alienation inheres in every grant to deprive a trustee in a grant of this power of disposition or alienation—the conveyance must contain a clause in restraint of alienation." It will thus clearly appear that S. H. Standart, assignee, having received the title to the property under consideration, by warranty deed, without restrictions or limitations upon his power of alienation, had a perfect and valid right to transfer the same and did by such transfer

convey that same title without restrictions or limitations.

It will further appear from pages 152 to 163 of the Transcript of Record that the title to the land under consideration by 15 different conveyances and accepted by as many parties as a good and merchantable title. During the period of 20 years beginning upon August 31, 1894, to date, this property was transferred by warranty deed from S. H. Standart, assignee, to Benjamin Jenkins, to December 10, 1914, during which latter date the second assignment of an oil and gas mining lease was taken upon this property by the Wichita Natural Gas Company, the title passed in the commercial world as a good. sufficient and marketable title. This fact, in itself, should be ample proof that the title to this land was regarded as a good and marketable title.

Respectfully submitted,

J. H. KEITH,
HUGO T. WEDELL, AND
JOHN J. JONES,

Solicitors and of Counsel for Respondents.

LIBERTY OIL COMPANY *v.* CONDON NATIONAL BANK ET AL.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

No. 98. Argued November 15, 16, 1922.—Decided November 27, 1922.

1. Where a defendant, sued at law in the District Court for money had and received, avers by answer and cross-petition that it is a stakeholder of the money in question, offers to pay it into court,

and prays that the other claimants be made parties, that the issue be litigated between them and the plaintiff, and that the defendant be discharged from liability, the proceeding becomes an equitable one, an interpleader, under Jud. Code, § 274b, as amended by Act of March 3, 1915, c. 90, 38 Stat. 956. P. 240.

2. While it is not so expressly required, either by Equity Rule 22 or by statute, there is authority, by implication from Jud. Code, § 274b, *supra*, and § 274a, to transfer a case thus begun at law and converted to equity, to the equity side of the court; and such, it seems, is the better practice. P. 241.
3. But failure to order such transfer does not deprive the suit of its equitable character. P. 242.
4. Where an equitable defense is interposed in an action at law, the equitable issue should first be disposed of; and, if an issue at law remains, it is triable to a jury. P. 242.
5. This preserves the right of jury trial guaranteed by the Seventh Amendment, being in conformity with the practice of the courts of law and chancery in England at the time of the adoption of the Constitution in the light of which the Amendment should be construed. P. 243.
6. Sections 274b and 274a of the Judicial Code, although not creating one form of civil action, are calculated to permit changes from law to equity and *vice versa*, with the least possible delay or formality. P. 243.
7. Where an action at law is thus converted into an interpleader, it is to be treated thenceforth, by trial and appellate courts, as a proceeding in equity; the issue between the claimants need not, under the Seventh Amendment, be submitted to a jury, but may be tried by the court; and the judgment is reviewable as in equity and not as at law. P. 244.
8. Under Jud. Code, § 269, as amended February 26, 1919, c. 48, 40 Stat. 1181, appellate courts are to give judgment after examination of the record without regard to technical errors, defects, or exceptions, not affecting substantial rights. P. 245.
9. Under Jud. Code, § 274b, *supra*, whether review is sought by writ of error or appeal, the appellate court has full power to render such judgment upon the record as law and justice require. P. 245.
10. Where certiorari was issued to the Circuit Court of Appeals to settle an important question of practice, *held*, that this Court though it had the power, would not also decide the merits but would remand the case for that purpose to the court below. P. 245.

271 Fed. 928, reversed.

235 Statement of the Case.

This suit was begun as an action at law in the District Court of Kansas by the Liberty Oil Company, a corporation organized under the laws of Virginia, and a citizen of that State, against the Condon National Bank, a corporation organized under the banking laws of the United States and resident and doing business in Kansas. Plaintiff by its petition averred that it had made a contract with the Atlas Petroleum Company of Oklahoma, C. M. Ball, Isadore Litman, P. G. Keith and J. H. Keith, residents of Kansas, by which it agreed to purchase and they agreed to sell 160 acres more or less of oil lands in Butler County, Kansas, for $1,150,000. By the contract, the purchaser was required to deposit $100,000 with the Liberty National Bank simultaneously with a deposit of the contract, and this sum, together with the assignments, transfers and conveyances under the contract, was to be held by the bank and by it to be delivered in accordance with the conditions of the contract. The main conditions, and the only ones here material, were that the vendors should furnish an abstract of the title to the property contracted to be sold showing a good and marketable title in them, that the vendee should have seven days in which to examine the abstract, and that if its examination should show a good and marketable title, the vendee should pay the bank $1,050,000, the remainder of the purchase money, and the bank should deliver the deeds of assignments and transfers to the vendee and the vendor should deliver possession of the land. If the examination showed a good and marketable title and the vendee should refuse to pay the money then due from it, the $100,000 was to be delivered to the vendors as liquidated damages and the contract was to become null and void. In the event that the examination should disclose that the title was not good and marketable, the vendee was to notify the vendors and they were to have thirty days in which to perfect the title and should they neglect in that time to do so, the $100,000 on

deposit was to be returned to the vendee and the contract was to become null and void.

The petition averred that the money and the contract were deposited in the defendant bank, that the abstract of title was submitted, that an examination of the abstract submitted showed that the title of the vendors was not good and marketable, in that in the chain of title the vendors claimed under the deed of an assignee for the benefit of creditors filed in a Colorado court and taking effect by the laws of that State but never authorized or confirmed by a court of competent jurisdiction under the laws of Kansas as required by the law of the latter State, that this defect was not remedied by the vendors within the time required by the contract, and on July 11, 1918, the plaintiff duly notified the defendant bank of this and demanded payment of the money deposited, that the defendant refused and appropriated the sum to its own use to the damage of the plaintiff in the sum of $100,000 and interest at six per cent. from the date of the demand and refusal.

The defendant bank answered admitting all the facts averred in the petition except those as to the character of the title shown by the abstract, and alleged that the vendors in the contract of sale had also demanded that the deposit of $100,000 be paid to them on the ground that the vendee had refused without right to accept a good and marketable title to the land sold, that the defendant bank had no interest in the deposit and offered to pay the sum into court or to such person as the court should order. The defendant asked that the vendors be made parties and required to set up their claim to the deposit, that the court make proper order as to the disposition of the money, and that the defendant upon compliance with the order be discharged from all liability in connection therewith. The court granted the prayer of the answer and "ordered, adjudged and decreed" that vendors be made

parties, and set up their claim within twenty days. The vendors waived summons and filed an answer and cross petition in which they averred that the petition of the plaintiff did not state a cause of action, and denied as much of the petition as averred that there were defects in the abstract of title which prevented it from being good and marketable. By the cross petition they asked for the payment of the $100,000 deposit and also a judgment for $1,050,000 as the purchase price for the land, title to which they had tendered, and for general relief. This cross petition the plaintiff answered making the same issue as that in the petition and answer. A jury was waived in writing. A bill of exceptions was taken embodying all the evidence, which was signed by the judge, and the same evidence was included in a transcript also certified to by the judge.

The District Court on the evidence found generally for the vendors, and from its opinion it appeared that it found the title good and marketable, and that upon plaintiff's refusal to accept the same the vendors became entitled to the $100,000 as liquidated damages. Accordingly it was "considered, ordered and adjudged" that the vendors, interveners, recover $10,750.00 as interest on the $100,000 from June 30, 1918, that the Condon Bank, defendant, be discharged from further liability, and that the interveners have judgment for the $100,000 then in the registry of the court. There is nothing in the record to show that the defendant bank was dismissed until this final judgment, although, under some authority not made a matter of record, it had turned the money into the registry of the court.

An appeal was taken to the Circuit Court of Appeals and a supersedeas bond given. The Circuit Court of Appeals held that the action was a suit at law, that under § 4 of the Act of September 6, 1916, c. 448, 39 Stat. 727, to amend the Judicial Code, it had the power and it was

its duty to consider the appeal taken as a writ of error, and that as the bill of exceptions showed no special findings of fact in a cause in which a jury had been waived but only a general finding for the interveners, it was not within the power of the court in a law case to consider the sufficiency of the evidence to sustain the finding. It therefore affirmed the judgment of the District Court. A certiorari brings the case here for consideration.

Mr. F. W. Lehmann, with whom *Mr. Harry E. Karr* and *Mr. Charles G. Yankey* were on the brief, for petitioner.

Mr. John J. Jones, with whom *Mr. J. H. Keith* and *Mr. Hugo T. Wedell* were on the brief, for respondents.

Mr. Chief Justice Taft, after stating the case, delivered the opinion of the Court.

We differ with the Circuit Court of Appeals in its holding that, as brought in review before it, this cause was an action at law. We think the cause was then equitable and the proper review was by appeal. The case began as an action at law for money had and received. When the defendant bank claimed to be only a stakeholder of the deposit, disclaimed interest therein and offered to pay it into court, and asked that the other claimants of the fund be made parties, its answer and cross petition became an equitable defense and a prayer for affirmative equitable relief in the nature of a bill for interpleader. Section 274b of the Judicial Code as amended by Act of March 3, 1915, c. 90, 38 Stat. 956, provides:

"That in all actions at law equitable defenses may be interposed by answer, plea, or replication without the necessity of filing a bill on the equity side of the court. The defendant shall have the same rights in such case as if he had filed a bill embodying the defense of seeking the relief prayed for in such answer or plea. Equitable

relief respecting the subject matter of the suit may thus be obtained by answer or plea. In case affirmative relief is prayed in such answer or plea, the plaintiff shall file a replication. Review of the judgment or decree entered in such case shall be regulated by rule of court. Whether such review be sought by writ of error or by appeal the appellate court shall have full power to render such judgment upon the records as law and justice shall require."

This section applies to the case before us. The proceeding was changed by defendant's answer and cross petition from one at law to one in equity, with all the consequences flowing therefrom. The better practice would perhaps have been, on the defendant's filing its answer and cross petition, to order the cause transferred to the equity side of the court. Under Equity Rule No. 22, a suit in equity which should have been brought at law must be transferred to the law side of the court. There is no corresponding provision in rule or statute which expressly directs this to be done when the action begun at law should have been by a bill on the equity side, but we think the power of the trial court to order a transfer in a case like this is implied from the broad language of § 274b, above quoted, by which the defendant who files an equitable defense is to be given the same rights as if he had set them up in a bill in equity, and from § 274a of the Judicial Code, quoted below, in which the court is directed, when a suit at law should have been brought in equity, to order amendments to the pleadings necessary to conform them to the proper practice. *Webb* v. *Southern Ry. Co.*, 235 Fed. 578, 593, 594. We are aware that a different conclusion has been reached by the Circuit Court of Appeals of the Fourth Circuit in *Waldo* v. *Wilson*, 231 Fed. 654, but for the reasons stated and after a full examination of that case, we think the conclusion of that court upon this point was too narrow.

Nor, by the failure to order the transfer in this case, did the suit lose the equitable character it had taken on by the answer and cross petition of the defendant. The situation thus produced was quite like that under state civil codes of procedure in which there is but one form of civil action, the formal distinction between proceedings in law and equity is abolished and remedies at law and in equity are available to the parties in the same court and the same cause. Neither legal nor equitable remedies are abolished under such codes. "What was an action at law before the code, is still an action founded on legal principles; and what was a bill in equity before the code, is still a civil action founded on principles of equity." Sutherland on Code Pleading, Practice and Forms, § 87—*DeWitt* v. *Hays*, 2 Cal. 463; *Smith* v. *Rowe*, 4 Cal. 6; *Howard* v. *Tiffany*, 3 Sandf. 695.

Section 274b is an important step toward a consolidation of the federal courts of law and equity and the questions presented in this union are to be solved much as they have been under the state codes. *United States* v. *Richardson*, 223 Fed. 1010, 1013. The most important limitation upon a federal union of the two kinds of remedies in one form of action is the requirement of the Constitution in the Seventh Amendment that "In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise reexamined in any court of the United States, than according to the rules of the common law."

Where an equitable defense is interposed to a suit at law, the equitable issue raised should first be disposed of as in a court of equity, and then if an issue at law remains, it is triable to a jury. *Massie* v. *Stradford*, 17 Oh. St. 596; *Dodsworth* v. *Hopple*, 33 Oh. St. 16, 18; *Taylor* v. *Standard Brick Co.*, 66 Oh. St. 360, 366; Sutherland, Code Pl. and Pr. § 1157. The equitable defense makes the issue

equitable and it is to be tried to the judge as a chancellor. The right of trial by jury is preserved exactly as it was at common law. The same order is preserved as under the system of separate courts. If a defendant at law had an equitable defense, he resorted to a bill in equity to enjoin the suit at law until he could make his equitable defense effective by a hearing before the chancellor. The hearing on that bill was before the chancellor and not before a jury, and if the prayer of the bill was granted, the injunction against the suit at law was made perpetual and no jury trial ensued. If the injunction was denied, the suit at law proceeded to verdict and judgment. This was the practice in the Courts of Law and Chancery in England when our Constitution and the Seventh Amendment were adopted, and it is in the light of such practice that the Seventh Amendment is to be construed.

Congress, we think, was looking toward such a union of law and equity actions in the enactment of § 274b, quoted above, and of § 274a, which, referring to courts of the United States, provides:

"That in case any of said courts shall find that a suit at law should have been brought in equity or a suit in equity should have been brought at law, the court shall order any amendments to the pleadings which may be necessary to conform them to the proper practice. Any party to the suit shall have the right, at any stage of the cause, to amend his pleadings so as to obviate the objection that his suit was not brought on the right side of the court. The cause shall proceed and be determined upon such amended pleadings. All testimony taken before such amendment, if preserved, shall stand as testimony in the cause with like effect as if the pleadings had been originally in the amended form."

To be sure, these sections do not create one form of civil action as do the codes of procedure in the States, but they

manifest a purpose on the part of Congress to change from a suit at law to one in equity and the reverse with as little delay and as little insistence on form as possible, and are long steps toward code practice.

Coming now to apply those two sections thus construed to the case before us, we find that by defendant's answer and the court's order it became a bill of interpleader in equity. Thereafter the proceedings should have been so treated, both in the trial and appellate courts. The chancellor having sustained a bill of interpleader, disposed of the controversy between the claimants by directing any method of trial which would best and expeditiously accomplish justice in the particular case. *State Insurance Co.* v. *Gennett*, 2 Tenn. Ch. 100, 101; *Rowe* v. *Hoagland's Administrators*, 7 N. J. Eq. 131; *Condict's Executors* v. *King*, 13 N. J. Eq. 375, 383; *City Bank* v. *Bangs*, 2 Paige, Ch. R. 570, 573; *Gibson* v. *Goldthwaite*, 7 Ala. 281, 290; *Angell* v. *Hadden*, 16 Vesey, 202; *Kirtland* v. *Moore*, 40 N. J. Eq. 106, 108; 2 Daniel's Ch. Practice, (6th Amer. ed.) 1568, 1569. This well established rule takes the issue here to be tried out of that class of issues in which there must have been a jury trial under the Seventh Amendment. Where it was one which the chancellor could readily dispose of in one proceeding, it was in the interest of economy, expedition and justice that he should do so. This is in accord with the general rule in equity embodied in Equity Rule 23 that jurisdiction once assumed should be maintained to end the litigation. *Greene* v. *Louisville & Interurban R. R. Co.*, 244 U. S. 499, 520; *McGowan* v. *Parish*, 237 U. S. 285, 296; *Camp* v. *Boyd*, 229 U. S. 530, 551, 552.

It was, therefore, error by the Circuit Court of Appeals to proceed as if it were reviewing a judgment in a suit at law upon a bill of exceptions. It is true that the record contained a bill of exceptions, but there was also a transcript of the same evidence certified as required

in appeals in equity. The plaintiff below was evidently not certain of the proper practice and prepared for either writ of error or appeal. Under § 269 of the Judicial Code, as amended by the Act of February 26, 1919, c. 48, 40 Stat. 1181, appellate courts are enjoined to give judgment after an examination of the record without regard to technical errors, defects or exceptions which do not affect the substantial rights of the parties; and under § 274b, whether the review is sought by writ of error or appeal, the appellate court is given full power to render such judgment upon the record as law and justice shall require. It follows that the court should have considered the issue of law and fact upon which the decree of the District Court depended, that is, whether there was a good and marketable title.

On this review by certiorari, we could consider and decide the issue which the Circuit Court of Appeals erroneously refused to consider. On such an issue alone, however, we would not have granted the writ, because except for the important question of practice the case was not of sufficient public interest to justify it. We think it better, therefore, to reverse the judgment of the Circuit Court of Appeals and to remand the case to that court for consideration and decision of the issues of fact and law in this case as on an appeal in equity.

Reversed.